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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Harvest Enterprises Inc., a Delaware  
corporation,

Plaintiff,

vs.

Elevele LLC, an Illinois limited liability  
company, Andrew Hunt, as Members'  
Representative, Veronica Hunt, an  
individual, and William Riley, an  
individual,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT**

Plaintiff, HARVEST ENTERPRISES, INC., a Delaware corporation (“Plaintiff” or “Harvest”), by and through its attorneys, Conant Law Firm, PLC and Tetzlaff Law Offices, LLC (*pro hac vice* applications to be filed), and for its Complaint against Defendants, ELEVELE LLC, an Illinois limited liability company (“Elevele”), ANDREW HUNT, as Members’ Representative (“Representative”), VERONICA HUNT, an individual (“Veronica Hunt”), and WILLIAM RILEY, an individual (“William Riley” and together with Elevele, Representative, and Veronica Hunt “Defendants”), alleges and states as follows:

**NATURE OF ACTION**

This action concerns the wrongful termination of Defendants’ Membership Interest Purchase Agreement (the “Agreement”, attached as Exhibit A) with Harvest. On March 25, 2019,

Harvest entered into the Agreement with Defendants for the purchase and sale of one hundred percent (100%) of the membership interests in Elevele. In order to close the transaction, the parties were obligated to cooperatively seek regulatory approval for the contemplated change of ownership. During the approval process, Defendants wrongfully terminated the Agreement despite their failure to timely fulfill their obligations under the Agreement.

Harvest brings this action seeking entry of a judgment declaring Defendants' termination of the Agreement invalid, as well as injunctive relief to prevent Defendants from violating Section 6.07 of the Agreement, specific performance, and damages in an amount to be proven at trial.

### **THE PARTIES**

1. Plaintiff, Harvest Enterprises, Inc. is a Delaware corporation in good standing, with its principal place of business in Tempe, Arizona.

2. Defendant, Elevele LLC is an Illinois limited liability company in good standing, with its principal place of business in Lake County, Illinois.

3. Defendant, Andrew Hunt is an individual whose domicile is in Lake Forest, Illinois and is a member of Elevele. Claims alleged against this defendant are alleged against him individually and in his capacity as a member of Elevele.

4. Defendant, Veronica Hunt is an individual whose domicile is in Lake Forest, Illinois and is a member of Elevele. Claims alleged against this defendant are alleged against her individually and in her capacity as a member of Elevele.

5. Defendant, William Riley is an individual whose domicile is in Lake Forest, Illinois and is a member of Elevele. Claims alleged against this defendant are alleged against him individually and in his capacity as a member of Elevele.



### **JURISDICTION AND VENUE**

6. Diversity jurisdiction is proper under 28 U.S.C. § 1332 as Plaintiff is a citizen of a different state than that of all Defendants and the amount in controversy is substantially in excess of \$75,000, in an amount to be proven at trial.

7. Venue is proper in the United States District Court for the District of Arizona pursuant to 28 U.S.C. § 1391(b)(3), specifically because Section 8.02 of the Agreement states that “any legal or equitable action or proceedings arising under or in connection with this Agreement may be brought in the state or federal courts of the United States with jurisdiction in either Maricopa County, Arizona or Cook County, Illinois.” [Ex. A, § 8.02, p. 50].

### **FACTUAL BACKGROUND**

8. On or about March 25, 2019 (“Effective Date”), Harvest and Defendants (as well as the members of Elevele, who own units of membership interest in Elevele) entered into the Agreement whereby Harvest would purchase, and Defendants would sell and assign to Harvest, one hundred percent (100%) of the membership interests in Elevele.

9. Pursuant to that Agreement and Illinois law, approval was required by the Illinois Department of Financial and Professional Regulation (the “IDFPR”) for the contemplated change of ownership. [Ex. A, § 5.01(e), p. 35].

10. Pursuant to Section 5.01(e) of the Agreement, Elevele had the obligation “to submit for approval *all necessary documentation* to the IDFPR in connection with (i) the transactions contemplated by this agreement \* \* \*” within thirty (30) days of the Effective Date. [Ex. A, § 5.01(e), p. 35] (emphasis added).

11. Elevele failed to submit all necessary documentation to the IDFPR within thirty (30) days of the Effective Date.

12. Despite Elevele's failure to timely submit the necessary documentation to the IDFPR, the parties proceeded with the transaction.

13. Pursuant to Section 6.03(a) of the Agreement, all parties were required to cooperate and, as promptly as practicable, use reasonable efforts to make all filings and submissions in order to obtain IDFPR approval. [*See* Ex. A, § 6.03(a), p. 38].

14. On June 10, 2019, despite Elevele's obligation under the Agreement to submit all necessary documents, Harvest submitted documents to the IDFPR as part of the approval process.

15. On June 18, 2019, in response to a request by the IDFPR, Harvest in its continuous effort to seek the appropriate consent and approval, submitted additional documents to the IDFPR in support of the parties' contemplated change of ownership.

16. On June 19, 2019, the IDFPR confirmed receipt of the additional supporting documents and that it would continue its review of the parties' application for change of ownership.

17. Pursuant to Section 5.03(c) of the Agreement, the Representative may not terminate the Agreement if any of the Defendants failed to perform or comply with any of the covenants, agreements or conditions of the Agreement which results in the failure of the closing to occur on or before June 23, 2019 (the "Termination Date"). [*See* Ex. A, § 5.03(c), p. 36].

18. On or about June 27, 2019, Defendants served a Notice of Termination on Harvest arguing that certain conditions set forth in the Agreement were not fulfilled by the Termination Date. In their Notice, Defendants argued that Harvest failed to (1) as "promptly as possible" use reasonable efforts to obtain all approvals from all Governmental Authorities, (2) as "promptly as practicable" consummate the transaction, and (3) to cooperate fully in seeking to obtain such approvals.

19. Between June 27, 2019 and July 19, 2019, despite Harvest's good faith efforts to have the Notice of Termination withdrawn and to move forward with the Agreement, Defendants ultimately refused to withdraw their Notice of Termination.

20. On July 19, 2019, Elevele received a letter from the IDFPR stating that it was "still reviewing the submitted materials" and that "[d]ue to the implementation of the Cannabis Regulation and Tax Act and the numerous change of ownership requests sitting before the [IDFPR], review of pending requests is taking considerably more time than usual." ("IDFPR Letter" attached as Exhibit B).

21. On July 20, 2019, despite receiving the IDFPR's July 19, 2019 letter indicating that the approval process and review was taking significantly more time and Harvest's good faith efforts to continue to fulfill its obligations under the Agreement, Defendants communicated to Harvest that they refused to withdraw their Notice of Termination.

**COUNT I**  
**PRELIMINARY INJUNCTION**

22. Harvest repeats and realleges each of the foregoing allegations as if fully set forth herein.

23. Harvest and Defendants have a valid, binding Agreement for Harvest to purchase and Defendants to sell and assign to Harvest one hundred percent (100%) of the membership interests in Elevele.

24. Pursuant to Section 6.07 of the Agreement, Defendants shall not directly or indirectly initiate, solicit or encourage, or furnish information to or engage in any discussions or negotiations of any type with any other Person or entity concerning the acquisition or any business combination transaction of membership interests in Elevele, and that any such breach or threatened

breach of Section 6.07 would cause irreparable injury to Harvest for which money damages would not provide an adequate remedy. [*See* Ex. A, § 6.07, p. 42-43].

25. On information and belief, Defendants have directly or indirectly, initiated, solicited or encouraged, or furnished information to or engaged in discussions or negotiations with a Person or entity that is not Harvest concerning the acquisition or any business combination transaction of membership interests in Elevele.

26. On information and belief, Defendants have sold or assigned, or threatened to sell or assign their membership interests in Elevele in violation of Section 6.07 of the Agreement.

27. As a result of Defendants' violation of Section 6.07 of the Agreement, Harvest will suffer irreparable harm by the irrevocable loss of the unique membership interests in Elevele.

28. Harvest has no other adequate remedy at law to protect its rights in and to the membership interests.

WHEREFORE, Plaintiff, Harvest Enterprises, Inc., a Delaware corporation, respectfully requests that this Court enter judgment in its favor and against Defendants on this Count I, and grant the following relief:

- (a) issue a temporary restraining order to maintain the status quo to prevent Harvest from suffering irreparable harm pending the resolution of Harvest's demand for specific performance;
- (b) issue a preliminary injunction restraining Defendants from directly or indirectly, initiating, soliciting or encouraging, or furnishing information to or engaging in any discussions or negotiations of any type with any other Person or entity in connection with the sale of the membership interests in Elevele;

- (c) an award to Harvest of its attorneys' fees and costs incurred in bringing and prosecuting this lawsuit; and
- (d) an award to Harvest of such other and further relief as the Court deems just, fair, and equitable.

**COUNT II**  
**SPECIFIC PERFORMANCE**

29. Harvest repeats and realleges each of the foregoing allegations as if fully set forth herein.

30. Harvest and Defendants have a valid, binding Agreement for Harvest's purchase and Defendants' sale and assignment to Harvest of one hundred percent (100%) of the membership interests in Elevele.

31. On April 24, 2019, Defendants breached Section 5.01(e) of the Agreement by failing to submit all necessary documents to the IDFPR within 30 days of the Effective Date of the Agreement.

32. On June 27, 2019, Defendants further breached the Agreement by wrongfully terminating the Agreement.

33. Pursuant to Section 8.16 of the Agreement, irreparable damage would occur if any provision of the Agreement was breached or not performed in accordance with the terms thereof, and that each party would be entitled to an injunction, specific performance and other equitable relief to prevent breaches and to enforce the terms and provisions of the Agreement without proof of actual damages. [*See* Ex. A, § 8.16, p. 53].

34. Harvest has performed all of the conditions, covenants, and promises required to be performed in accordance with the terms and conditions of the Agreement.

35. Harvest has substantially performed under the Agreement to its detriment by submitting the required documents to the IDFPR and paying the fees associated with the submission.

36. Defendants have failed to perform their obligations under the Agreement, specifically by (i) their failure to timely submit all necessary documents required for IDFPR Approval, (ii) their wrongful termination of the Agreement, and (iii) their unwillingness to use reasonable efforts to consummate the transaction by failing to cooperate with Harvest in obtaining IDFPR approval.

37. Harvest remains ready and willing to perform all terms of the Agreement applicable to Harvest.

38. Harvest has no other adequate remedy at law to protect its rights in and to the membership interests in Elevele.

WHEREFORE, Plaintiff, Harvest Enterprises, Inc., a Delaware corporation, respectfully requests that this Court enter judgment in its favor and against Defendants on this Count II, and grant the following relief:

- (a) entry of an order that Defendants be required specifically to perform pursuant to the terms of the Agreement;
- (b) an award to Harvest of its attorneys' fees and costs incurred in bringing and prosecuting this lawsuit; and
- (c) an award to Harvest of such other and further relief as the Court deems just, fair, and equitable.

**COUNT III**  
**BREACH OF IMPLIED COVENANT OF**  
**GOOD FAITH AND FAIR DEALING**

39. Harvest repeats and realleges each of the foregoing allegations as if fully set forth herein.

40. Arizona law implies a covenant of good faith and fair dealing in every contract, including the Agreement.

41. Defendants breached this implied covenant of good faith and fair dealing by (i) their failure to timely submit all necessary documents required for IDFPR Approval, (ii) their wrongful termination of the Agreement, and (iii) their unwillingness to use reasonable efforts to consummate the transaction by failing to cooperate with Harvest in obtaining IDFPR approval.

42. Defendants' June 27, 2019 Notice of Termination was made in bad faith, as Defendants were on notice that the IDFPR had received the additional supporting documents submitted by the parties required for the approval process.

43. Defendants' refusal to withdraw the Notice after receiving the July 19, 2019 IDFPR Letter constitutes further bad faith given the IDFPR's indication that the approval process was taking considerably more time than usual, but that it was still reviewing the application materials. [See Exhibit B].

44. As a direct and proximate result of Defendants' breach of the implied covenant of good faith and fair dealing, Harvest has suffered damages in an amount to be proven at trial, plus reasonable attorneys' fees and expenses incurred in enforcing the Agreement.

WHEREFORE, Plaintiff, Harvest Enterprises, Inc., a Delaware corporation, respectfully requests that this Court enter judgment in its favor and against Defendants on this Count III, and grant the following relief:

- (a) an award of damages in an amount to be proven at trial;
- (b) an award to Harvest of its attorneys' fees and costs incurred in bringing and prosecuting this lawsuit; and
- (c) an award to Harvest of such other and further relief as the Court deems just, fair, and equitable.

**COUNT IV**  
**DECLARATORY JUDGMENT**  
**28 U.S.C § 2201**

45. Harvest repeats and realleges each of the foregoing allegations as if fully set forth herein.

46. Harvest asserts that Defendants wrongfully terminated the Agreement on June 27, 2019 for the reasons set forth above.

47. Defendants argue that there was a legitimate basis to terminate the Agreement and that they have no obligation to proceed to close under the Agreement.

48. Based on these diverging views, an actual case and controversy exists between Harvest and Defendants.

49. The parties have adverse legal interest of sufficient immediacy to warrant the issuance of a declaratory judgment concerning the validity of the Notice of Termination Defendants delivered to Harvest.

50. A declaratory judgment will terminate the uncertainty regarding the transaction contemplated by the Agreement and will clarify any continuing obligations the parties may have under the Agreement.

51. In these circumstances, the Court may enter declaratory relief under 28 U.S.C. § 2201(a).



WHEREFORE, Plaintiff, Harvest Enterprises, Inc., respectfully requests that this Court enter judgment in its favor and against Defendants on this Count IV, and grant the following relief:

- (a) a judicial declaration that Defendants wrongfully terminated the Agreement;
- (b) a judicial declaration that Defendants must proceed with their obligations as set forth in the Agreement;
- (c) an award to Harvest of its attorneys' fees and costs incurred in bringing and prosecuting this lawsuit; and
- (d) an award to Harvest of such other and further relief as the Court deems just, fair, and equitable.

Date: July 26, 2019

Respectfully Submitted,

HARVEST ENTERPRISES, INC.,  
a Delaware corporation,

By: /s/ Paul A. Conant

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# **Exhibit A**

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**MEMBERSHIP INTEREST PURCHASE AGREEMENT**

**by and among**

**Harvest Enterprises, Inc.,**

**Elevele LLC,**

**the Members of Elevele LLC,**

**and**

**Andrew Hunt, as Members' Representative;**

**Dated Effective as of March 25, 2019**

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## MEMBERSHIP INTERESTS PURCHASE AGREEMENT

Dated Effective March 25, 2019

This Membership Interest Purchase Agreement (this “**Agreement**”) is entered into as of the date first set forth above (the “**Effective Date**”) by and between (i) Harvest Enterprises, Inc., a Delaware corporation, on behalf of itself and any assignee, as described in Section 8.13 (“**Buyer**”), (ii) Elevele LLC, an Illinois limited liability company (the “**Company**”), (iii) the members of the Company listed on the signature page of this Agreement (collectively, the “**Members**” and each a “**Member**”), and (iv) Andrew Hunt, solely in his capacity as the Members’ Representative (the “**Members’ Representative**”). The Company and each Member may be referred to collectively herein as the “**Selling Parties**” and individually as a “**Selling Party**.”

### RECITALS

WHEREAS, the Company is in the business of distributing and selling medical cannabis in the State of Illinois (the “**Business**”);

WHEREAS, the Members own units of membership interest of the Company (the “**Membership Interests**”), which constitute one hundred percent (100%) of the issued and outstanding Membership Interests of the Company (the “**Acquired Interests**”);

WHEREAS, on the terms and subject to the conditions set forth herein, the Members desire to sell to Buyer, and Buyer desires to purchase from the Members, the Acquired Interests.

NOW THEREFORE, in consideration of the foregoing, the representations, warranties, covenants and agreements set forth in this Agreement, and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties hereby agree as follows:

### ARTICLE I. DEFINITIONS

**Section 1.01 Definitions.** The following terms, as used herein, have the following meanings

- (a) “**Action**” means any claim, charge, action, suit, arbitration, mediation, inquiry, hearing, audit, proceeding or investigation by or before any Governmental Authority, including any audit, claim or assessment for Taxes or otherwise.
- (b) “**Affiliate**” means, with respect to any specified Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise.
- (c) “**Ancillary Agreements**” means such other agreements as the Buyer and Members’ Representative reasonably agree to after the Effective Date.
- (d) “**Business Day**” means any day that is not a Saturday, Sunday or other day on which banking institutions in Illinois are authorized or required by law or executive order to close.

- (e) **“Cannabis Inventory”** means bagged or packaged inventory of flower, trim, oils, extracts, and other cannabis materials in possession of the Company on the Closing Date.
- (f) **“Cash”** means the aggregate amount of all cash, commercial paper, certificates of deposits and other bank deposits, treasury bills and all other cash equivalents of the Company (including all uncleared checks or deposits received by the Company), as calculated in accordance with GAAP.
- (g) **“Closing Date Cannabis Inventory”** means the amount of Cannabis Inventory on hand as of immediately prior to the Closing.
- (h) **“Closing Date Cash”** means the amount of Company’s Cash on hand as of immediately prior to the Closing.
- (i) **“Closing Date Indebtedness”** means the amount of Indebtedness and payment obligations of the Company outstanding as of immediately prior to the Closing.
- (j) **“Closing Date Transaction Expenses”** means the amount of Transaction Expenses as of immediately prior to the Closing.
- (k) **“Code”** means the Internal Revenue Code of 1986, as amended.
- (l) **“Contract”** means any written or oral contract, agreement, indenture, commitment, note, bond, loan, instrument, lease, conditional sale contract, mortgage, license, arrangement or other legally binding agreement or obligation.
- (m) **“Disclosure Schedule”** means the Disclosure Schedule attached hereto, dated as of the date hereof, delivered by the Selling Parties to Buyer in connection with this Agreement.
- (n) **“Environmental Claim”** means any and all administrative, regulatory or judicial Actions, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations, proceedings, consent orders or consent agreements relating in any way to any Environmental Law or any Environmental Permit.
- (o) **“Environmental Laws”** means all Laws, now or hereafter in effect and as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety, product registration, natural resources or Hazardous Materials, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980.
- (p) **“Environmental Notice”** means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.
- (q) **“Environmental Permits”** means all Permits required under or issued pursuant to any applicable Environmental Law.

- (r) “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.
- (s) “**ERISA Affiliate**” means all employers, trades or businesses (whether or not incorporated) that would be treated together with the Company or any of its Affiliates as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code.
- (t) “**GAAP**” means United States generally accepted accounting principles and practices in effect from time to time applied consistently throughout the periods involved.
- (u) “**Governmental Authority**” means any federal, national, foreign, state, provincial, local, or similar government, governmental, regulatory or administrative authority, agency, bureau, department, board, panel or commission or any court, tribunal, or judicial or arbitral body or mediator or any other instrumentality of any kind of any of the foregoing.
- (v) “**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.
- (w) “**HHR**” means Harvest Health & Recreation, Inc., a British Columbia corporation.
- (x) “**HHR Stock**” has the meaning ascribed to it in Section 2.01(c)(ii).
- (y) “**Hazardous Materials**” means (a) petroleum and petroleum products, radioactive materials, asbestos-containing materials, urea formaldehyde foam insulation, transformers or other equipment that contain polychlorinated biphenyls and radon gas, and (b) any other chemicals, materials or substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants” or “pollutants”, or words of similar import, under any applicable Environmental Law.
- (z) “**Illinois Surtax Liability**” means any liability for Taxes imposed on any Person under Section 201(o) of the Illinois Income Tax Act.
- (aa) “**Indebtedness**” means, with respect to the Company, at the time of any determination, without duplication: all obligations, contingent or otherwise, of the Company, including the outstanding principal amount of, all accrued and unpaid interest on and other payment obligations (including any premiums, termination fees, expenses, breakage costs or penalties due upon prepayment of or payable in connection with this Agreement or the consummation of the transactions contemplated by this Agreement) in respect of, (a) all indebtedness of the Company for borrowed money, which shall include borrowing agreements such as notes, bonds, indentures, mortgages, loans and lines of credit or similar instruments, (b) the guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making or sale with recourse by a Person of the obligation of another Person, (c) all obligations (including breakage costs) payable by the Company under interest rate or currency protection agreements, (d) any reimbursement obligation with respect to letters of credit (including standby letters of credit to the extent drawn upon), bankers’ acceptances, performance bonds or similar facilities issued for the

account of the Company, (e) all obligations arising from installment purchases of property or representing the deferred purchase price of property or services in respect of which the Company is liable, contingently or otherwise, as obligor or otherwise, including any earnouts, seller notes, contingency payments or similar Liabilities relating to past acquisitions, (f) all obligations, whether or not assumed, secured by any Lien or payable out of the proceeds or product from any property or assets now or hereafter owned by the Company, (g) all obligations under capital leases (as determined in accordance with GAAP), (h) deferred compensation for services, (i) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by the Company, (j) trade payables and other current liabilities incurred in the ordinary course of business, and (k) any obligation of the type referred to in clauses (a) through (j) of this definition of another Person, the payment of which the Company has guaranteed, or which is secured by any property or assets of such Person, or for which the Company is responsible or liable, directly or indirectly, jointly or severally, as obligor, guarantor or otherwise.

- (bb) **“Intellectual Property”** means all intellectual property rights arising from or in respect of the following: (i) inventions, processes, methods, algorithms and formulae, including all patents and patent applications and statutory invention registrations, (ii) all trademarks, service marks, trade names, service names, brand names, trade dress, logos, domain names and corporate names and other identifiers of source or goodwill, including registrations and applications for registration or renewal thereof and including the goodwill of the business symbolized thereby or associated therewith, (iii) works, copyrights, including copyrights in computer software, promotional materials and any websites, data, databases and any registrations and applications for registration of any of the forgoing, (iv) all computer software (including source code, executable code, data, databases and documentation), and (v) confidential and proprietary information, including trade secrets, know-how and rights in non-published inventions.
- (cc) **“Knowledge”** means (a) with respect to the Company and the Members, the actual knowledge of Andrew Hunt and Veronica Hunt and the knowledge that each such individual would obtain after reasonable inquiry, and (b) with respect to Buyer, the actual knowledge of Steve White and Brent Russum and the knowledge that each such individual would obtain after reasonable inquiry.
- (dd) **“Law”** means any domestic or foreign, federal, state, municipality or local law, statute, ordinance, code, rule, regulation, directive, norm, order, requirement or rule of law (including common law); provided, however, the parties hereby acknowledge that under United States federal law, and more specifically the Federal Controlled Substances Act, the possession, use, cultivation, marketing and transfer of cannabis is illegal and that, notwithstanding anything to the contrary, with respect to regulated cannabis business activities, “Law”, “law”, or “federal” shall only include such federal law, authority, agency, or jurisdiction as is not in conflict with the Laws, regulations, authority, agency, or jurisdiction of any state, district, or territory regarding such regulated cannabis business activities.
- (ee) **“Leased Real Property”** means the real property leased, subleased, licensed or otherwise used by the Company as tenant, subtenant, licensee or occupant, as



applicable, together with, to the extent leased by the Company, all buildings and other structures, facilities or improvements currently or hereafter located thereon, all fixtures, systems, equipment and items of personal property of the Company attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to the foregoing.

- (ff) **“Liabilities”** means with respect to any Person, any and all debts, liabilities or obligations of such Person of any kind or nature whatsoever, whether asserted or unasserted, known or unknown, accrued or unaccrued, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person, including those arising under any Law (including any Environmental Law), Action or Governmental Order and those arising under any Contract, agreement, arrangement, commitment or undertaking.
- (gg) **“Lien”** means any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage deed of trust, right of way, easement, encroachment, servitude, right of first option, right of first or last negotiation or refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.
- (hh) **“Losses”** means any and all losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind (including consequential damages, but only to the extent that such damages constitute the natural, probable and reasonably foreseeable consequence of the breach or were otherwise within the contemplation of the parties), including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; provided, however, that “Losses” shall not include punitive, speculative or remote damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.
- (ii) **“Material Adverse Effect”** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Company, or (b) the ability of the Selling Parties to consummate the transactions contemplated hereby on a timely basis; provided, however, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change attributable to: (i) general economic or political conditions; (ii) conditions affecting the industries in which the Company operates (including but not limited to the cannabis industry), except to the extent such conditions adversely affect the Company in a disproportionate manner relative to other companies in the cannabis industry; (iii) any changes in financial, banking or securities markets in general; (iv) a national emergency, acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any changes in applicable Laws or accounting rules (including GAAP); or (vi) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or



threatened losses of employees, customers, suppliers, distributors or others having relationships with the Company.

- (jj) **“Multiple Voting Shares”** means the multiple voting shares in the capital of HHR.
- (kk) **“Organizational Documents”** means, with respect to any Person that is not an individual, (a) such Person’s certificate of incorporation and bylaws, (b) such Person’s certificate of formation, certificate of trust, limited liability company agreement, limited partnership agreement or trust agreement or (c) any documents comparable to those described in clauses (a) and (b) as may be applicable pursuant to any applicable Law, and (c) any amendment or modification to any of the foregoing.
- (ll) **“Permit”** means any permit, license, certificate (including a certificate of occupancy) registration, authorization, application, filing, notice, qualification, waiver of any of the foregoing or approval of a Governmental Authority, including without limitation, the Special Use permit for a conditional use issued by the City of Highland Park.
- (mm) **“Person”** means an individual, corporation, partnership (including a general partnership, limited partnership or limited liability partnership), limited liability company, association, trust or other entity or organization, including a government, domestic or foreign, or political subdivision thereof, or an agency or instrumentality thereof.
- (nn) **“Personal Property”** means all of the machinery, equipment, tools, furniture, leasehold improvements, office equipment, computer hardware (including peripherals), appliances, spare parts, supplies, materials and other items of tangible personal property of every kind which are owned, used or leased (as lessor or lessee) by the Company and used or useful in the conduct of the Business or the operations of the Business or intended by the Company for use in connection with the Business or the operations of the Business, wherever located and whether or not carried on the books of the Company.
- (oo) **“Regulatory License”** means the license and related approvals authorizing the Company to operate in the State of Illinois to lawfully distribute and sell medical cannabis and other cannabis products pursuant to The Compassionate Use of Medical Cannabis Act of the State of Illinois, including without limitation, that certain Dispensing Organization License No. 280-000032-DISP issued by the State of Illinois Department of Financial and Professional Regulation.
- (pp) **“Release”** means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing and the like into or upon any land or water or air or otherwise entering into the environment.
- (qq) **“Subordinate Voting Shares”** means the subordinate voting shares in the capital of HHR.
- (rr) **“Tax(es)”** means any federal, state, local or non-U.S. tax, charge, fee, levy, custom, duty, deficiency, or other assessment of any kind or nature whatsoever imposed by any Taxing Authority (including without limitation any income (net or gross)), gross receipts, profits, windfall profit, premiums customs duty, capital stock, sales, use,

goods and services, ad valorem, franchise, license, stamp, withholding, employment, social security (or similar), workers compensation, unemployment compensation, disability, employment, payroll, severance occupation, transfer, excise, import, real property, personal property, intangible property, occupancy, registration, recording, value added, minimum, unclaimed property, escheat payments, alternative minimum, environmental or estimated tax), including any liability therefor as a transferee (including under Section 6901 of the Code or similar provision of applicable Law) or successor, as a result of Treasury Regulation Section 1.1502-6 or similar provision of applicable Law or as a result of any Tax sharing, indemnification or similar agreement, together with any interest, penalty, additions to tax or additional amount imposed with respect thereto.

- (ss) **“Tax Return”** means any return, information return, declaration, claim for refund or credit, report or any similar statement, and any amendment thereto, including any attached schedule and supporting information, whether on a separate, consolidated, combined, unitary or other basis, that is filed or required to be filed with any Taxing Authority in connection with the determination, assessment, collection or payment of a Tax or the administration of any Law relating to any Tax.
- (tt) **“Taxing Authority”** means the Internal Revenue Service and any other Governmental Authority responsible for the collection, assessment or imposition of any Tax or the administration of any Law relating to any Tax.
- (uu) **“Termination Date”** means the date that is 90 days from the Effective Date.
- (vv) **“Transaction Expenses”** means all fees, costs and expenses incurred by or behalf of, or otherwise payable by the Company (or incurred by or on behalf of, or otherwise payable by any Selling Party) that have not been paid as of the Closing Date and that will become or remain a liability of the Company (a) to third parties in connection with the consideration, preparation, documentation, execution and consummation of the transactions contemplated by this Agreement, or any alternative transactions, including fees and disbursements of any Selling Party, attorneys, financial advisors, accountants and other advisors and service providers, and (b) in respect of any bonus, severance or other payment or other form of compensation or benefits that is created, accelerated, accrues or becomes payable by the Company in connection with the consummation of the transactions contemplated by this Agreement, to any present or former manager, shareholder, member, employee, independent contractor or consultant thereof, including pursuant to any employment or consulting agreement, benefit plan or any other Contract, including any Taxes payable on or triggered by any such payment.
- (ww) **“VWAP”** means, for any date, the price determined by the first of the following clauses that applies: (a) if the Subordinate Voting Shares are then listed or quoted on the Canadian Securities Exchange (the **“CSE”**), the daily volume weighted average price of the Subordinate Voting Shares for such date (or the nearest preceding date) on the CSE (based on a Business Day from 9:30 a.m. (Eastern time) to 4:00 p.m. (Eastern time)), calculated by dividing the total value by the total volume of Subordinated Voting Shares traded during the relevant period, (b) if the Subordinate Voting Shares are not then listed or quoted for trading on the CSE and if prices for

the Subordinate Voting Shares are then reported on another stock exchange, the most recent bid price per share of the Subordinate Voting Shares so reported, or (c) in all other cases, the fair market value of a share of Subordinate Voting Shares as determined by an independent appraiser selected by the Company, the fees and expenses of which shall be paid by the Company.

**Section 1.02 Interpretive Provisions.** Unless the express context otherwise requires:

- (a) the words “hereof,” “herein,” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (b) terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa;
- (c) the terms “Dollars” and “\$” mean United States Dollars;
- (d) references herein to a specific Section, Subsection, Recital, Schedule or Exhibit shall refer, respectively, to Sections, Subsections, Recitals, Schedules or Exhibits of this Agreement;
- (e) wherever the word “include,” “includes,” or “including” is used in this Agreement, it shall be deemed to be followed by the words “without limitation”;
- (f) references herein to any gender shall include each other gender;
- (g) references herein to any Person shall include such Person’s heirs, executors, personal representatives, administrators, successors and assigns; provided, however, that nothing contained in this Section 1.02(g) is intended to authorize any assignment or transfer not otherwise permitted by this Agreement;
- (h) references herein to a Person in a particular capacity or capacities shall exclude such Person in any other capacity;
- (i) references herein to any contract or agreement (including this Agreement) mean such contract or agreement as amended, supplemented or modified from time to time in accordance with the terms thereof;
- (j) with respect to the determination of any period of time, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”;
- (k) references herein to any Law or any license mean such Law or license as amended, modified, codified, reenacted, supplemented or superseded in whole or in part, and in effect from time to time; and
- (l) references herein to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder.

**ARTICLE II. PURCHASE AND SALE OF ACQUIRED INTERESTS**

**Section 2.01 Purchase and Sale of Acquired Interests.**

- (a) Subject to the terms and conditions of this Agreement, at the Closing, the Members shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from the Members, the Acquired Interests, free and clear of any and all Liens.
- (b) The aggregate purchase price for the Acquired Interests (the “**Purchase Price**”) shall be an amount equal to Fourteen Million Dollars (USD \$14,000,000) (the “**Base Purchase Price**”), minus (i) the amount of Closing Date Indebtedness, minus (ii) the amount of Closing Date Transaction Expenses, and subject to the remaining adjustments set forth in Section 2.02.
- (c) The Purchase Price consists of:
  - (i) Three Million Five Hundred Thousand Dollars (USD \$3,500,000) in cash (the “**Cash Payment**”);
  - (ii) One Million Five Hundred Thousand Dollars (USD \$1,500,000) in Multiple Voting Shares (the “**Stock Payment**”) of HHR (the “**HHR Stock**”). The number of Multiple Voting Shares to be issued to the Members on the Closing Date shall be determined by dividing the amount of the Stock Payment (adjusted to Canadian dollars by multiplying the amount of the Stock Payment by the daily average exchange rate published by the Bank of Canada on the date immediately prior to the Closing Date) by one hundred (100) times the twenty (20) day average VWAP of HHR’s Subordinate Voting Shares over the twenty (20) day period prior to the Closing Date, subject to Section 2.03(d); and
  - (iii) A promissory note in the amount of Nine Million Dollars (USD \$9,000,000), the form of which is substantially set forth in the attached Exhibit A (the “**Note**”).

**Section 2.02 Company Closing Certificate.** No more than five (5), but at least two (2), Business Days prior to the Closing Date, the Members’ Representative shall deliver to Buyer a duly executed certificate (the “**Company Closing Certificate**”) setting forth (i) the Selling Parties’ good faith estimate of the amount of Closing Date Indebtedness, including the respective parties to whom such Indebtedness is owed and amounts; (ii) the Selling Parties’ good faith estimate of the amount of Closing Date Transaction Expenses, including the respective parties to whom such Transaction Expenses are owed and amounts; (iii) the Selling Parties’ good faith estimate of the amount of Closing Date Cash; (iv) the Selling Parties’ good faith estimate of the Closing Date Cannabis Inventory; and (v) based on such calculations, an amount equal to the Cash Payment minus (A) the amount of Closing Date Indebtedness set forth in the Company Closing Certificate; minus (B) the amount of Closing Date Transaction Expenses set forth in the Company Closing Certificate; minus (C) the amount, if any, by which the Closing Date Cash is less than \$50,000, as set forth in the Company Closing Certificate; plus (D) the amount, if any, by which the Closing Date Cash exceeds \$70,000, as set forth in the Company Closing Certificate; minus (E) the amount, if any, by which the Closing Date Cannabis Inventory is less than \$130,000, as set forth in the Company Closing Certificate; and plus (F) the amount, if any, by which the Closing Date Cannabis Inventory exceeds \$150,000, as set forth in the Company Closing Certificate (such final amount being, the “**Initial Cash Purchase Price**”).

**Section 2.03 Closing Payments.** On or prior to the Closing, as determined by Buyer, Buyer shall pay the Cash Payment and Stock Payment, and will execute and deliver the Note, as follows:

- (a) Buyer shall pay (from the Cash Payment amount) to accounts specified by the Members' Representatives, by wire transfer of immediately available funds, such cash amounts as are necessary to pay in full the Closing Date Indebtedness, as set forth in the Company Closing Certificate;
- (b) Buyer shall pay (from the Cash Payment amount) to accounts specified by the Members' Representative, by wire transfer of immediately available funds, such cash amounts as are necessary to pay in full the Closing Date Transaction Expenses, as set forth in the Company Closing Certificate;
- (c) Buyer shall pay the Initial Cash Purchase Price to accounts specified by the Members' Representative, by wire transfer of immediately available funds, an amount in cash equal to the Initial Cash Purchase Price.
- (d) Buyer shall pay the Stock Payment to the Members in accordance with their percentage ownership of Membership Interests, as set forth on the attached Exhibit B. The determination of HHR Stock payable to the Members at Closing and the price per share shall be equal to the greater of (i) the weighted average VWAP price of HHR's Subordinate Voting Shares over the twenty (20) Business Days immediately prior to the Closing multiplied by 100, or (ii) the HHR Subordinate Voting Share closing price on the CSE on the trading day prior to the earlier of (a) the date of the public announcement of this transaction by way of news release, or (b) the posting of notice to the CSE of the proposed share issuance hereunder, less the maximum permissible discount, pursuant to the policies of the CSE for the Subordinate Voting Shares, times 100. The issuance of any HHR Stock hereunder will be subject to receipt of all necessary securities and regulatory approvals, including, without limitation, the approval of the CSE and any other Governmental Authority.
- (e) Buyer shall duly execute and deliver the Note to the Members at Closing.

**Section 2.04 Closing.** Subject to the terms and conditions of this Agreement, the sale and purchase of the Acquired Interests shall take place at a closing (the "**Closing**") to be held remotely via the electronic exchange of counterpart signature pages no later than two (2) Business Days after the last of the conditions to Closing set forth in Article V have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or in such other manner or at such other time or date as the Parties may mutually agree upon in writing (in either case, the "**Closing Date**").

**Section 2.05 Closing Deliveries by the Selling Parties.** On or prior to the Closing, the Selling Parties and the Members' Representative shall deliver or cause to be delivered to Buyer the following, as applicable:

- (a) executed copies of each third-party consent, approval, notification or amendment listed on Schedule 3.06, which shall include without limitation, such application for approval and letters of notice, respectively, to the State of Illinois Department of Financial and Professional Regulation (the "**IDFPR**") and the City Manager and Director of Community Development of the City of Highland Park, Illinois;
- (b) executed counterparts of each of the Ancillary Agreements (as applicable);



- (c) The original certificates evidencing all of the Acquired Interests, if any, accompanied by duly executed assignments or such other instruments of transfer duly executed in blank and with all required unit transfer stamps affixed, in form and substance satisfactory to the Buyer as required for the same to be transferred to the ownership of the Buyer, with all necessary transfer Tax and other revenue stamps, acquired at each Members' expense, affixed, provided that if any original certificates are lost, the applicable Member may deliver a lost certificate affidavit and indemnification agreement in a form mutually acceptable to the Company and the Buyer;
- (d) certificates of good standing for the Company issued by the Illinois Secretary of State and from each jurisdiction where the Company is qualified to do business as a foreign limited liability company, dated as of a date not earlier than ten (10) days prior to the Closing;
- (e) complete and correct copies of the minute books, operating agreements, ledgers and registers, if any, and other records relating to the organization, ownership and maintenance of the Company, if not currently located on the premises of the Company;
- (f) a certification duly executed by the Members' Representative and dated as of the Closing Date, in form and substance required under Regulations Section 1.897-2(h)(2) and 1.1445-2(c)(3) and reasonably acceptable to Buyer, certifying that none of the equity interests in the Company is a "United States real property interest" within the meaning of Section 897 of the Code;
- (g) the resignations, effective as of the Closing, of such of the managers and officers of the Company as are designated by Buyer;
- (h) payoff letters, releases and lien discharges (or agreements therefor), each in a form reasonably satisfactory to Buyer from each creditor or vendor that has a claim that is part of the Indebtedness or Transaction Expenses (the "**Payoff Letters**"), such Payoff Letters to also specify the amount owed to such creditors as well as wire instructions for any payment to be made to any of them;
- (i) agreements or instruments evidencing the termination of the agreements set forth on Schedule 2.05(i), in each case duly executed by each party thereto and providing that neither Buyer nor the Company will have any liability or obligation under any such terminated agreements following the Closing;
- (j) a complete list of all of the Cannabis Inventory owned by the Company as of the Closing Date (the "**Updated Inventory Report**");
- (k) a certificate from a duly authorized officer or manager of the Company, dated as of the Closing, (i) certifying and attaching true and complete copies of (A) the joint resolutions duly and validly adopted by the Members and managers of the Company authorizing the execution, delivery and performance of this Agreement, the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby; (B) the articles of organization of the Company, as amended to date and as currently in effect; (C) the limited liability company agreement of the Company, as amended to date and as currently in effect; and (D) the certificate of formation of the Company, as amended to date and as currently in effect; (ii) certifying the names and specimen signatures of the managers of the Company and each of the Members of the Company authorized to sign this Agreement and the

Ancillary Agreements to which it is a party and the other documents to be delivered hereunder and thereunder; and (iii) certifying and evidencing that the conditions set forth in Article V have been satisfied and that the statements therein are true and correct; and

- (l) such other certificates, documents, schedules, agreements, resolutions, consents, approvals, rulings or other instruments required by this Agreement to be so delivered at or prior to the Closing together with such other items as may be reasonably requested by Buyer in order to effectuate or evidence the transactions contemplated hereby.

**Section 2.06 Closing Deliveries by the Buyer.** At the Closing, Buyer shall deliver or cause to be delivered the following:

- (a) executed counterparts of each of the Ancillary Agreements (as applicable);
- (b) a certificate from a duly authorized officer of Buyer, dated as of the Closing, (i) certifying and attaching true and complete copies of the resolutions duly and validly adopted by the Board of Directors (or its equivalent) of Buyer authorizing the execution, delivery and performance of this Agreement, the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby; and (ii) certifying that the conditions set forth in Article V have been satisfied and that the statements therein are true and correct; and
- (c) such other certificates, documents, schedules, agreements, resolutions, consents, approvals, rulings or other instruments required by this Agreement to be so delivered at or prior to the Closing together with such other items as may be reasonably determined by Buyer in order to effectuate or evidence the transactions contemplated hereby

**Section 2.07 Conveyance Taxes.** All transfer (including real estate transfer) documentary, sales, use, stamp, registration, and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement or the transactions contemplated hereby will be paid by the Members when due and the Members will, at their own expense, file all necessary Tax Returns and other documentation in a manner consistent with applicable Law, with respect to all such transfer, documentary, sales, use, stamp, registration and other Taxes and fees. In addition, the Members will pay any Illinois Surtax Liability arising from the transactions contemplated by this Agreement and will indemnify the Buyer and its Affiliates and will hold them harmless from all liability, costs, or expenses incurred by the Company or any Affiliate in respect of any such Illinois Surtax Liability.

**Section 2.08 Withholding Tax.** Buyer, the Company, and the Members shall be entitled to deduct and withhold from the Purchase Price such amounts that Buyer, the Company and the Members may be required to deduct and withhold under the Code or any provision of applicable Tax Law. To the extent that amounts are so deducted or withheld, such withheld or deducted amounts shall be treated for all purposes of this Agreement as having been paid to the Members. As of the Effective Date, it is the Buyer's intent not to withhold any amount of the Purchase Price for Tax purposes. However, prior to Closing if it becomes reasonably apparent to Buyer that it will be required to withhold a portion of the Purchase Price pursuant to the Code or any applicable Tax Law, then Buyer shall promptly notify the Member Representative, and provide the Member Representative with all relevant information in connection with such anticipated withholding, so that Buyer may have an opportunity to seek an exemption.

**Section 2.09 Lock-Up.**

- (a) In connection with the payment by Buyer to the Members of the Stock Payment, each Member agrees that commencing on the Closing Date and continuing until the day that is twelve (12) months after the Closing Date, no Member will, without the prior written consent of Buyer, directly or indirectly: (i) offer, sell, transfer, pledge, contract to sell, grant any option to purchase, make any short sale, hypothecate, pledge, transfer or otherwise dispose of or monetize the economic value of any of the HHR Stock received by the Members (the “**Locked-Up Securities**”) pursuant to the terms hereof; or (ii) announce any intention to do any of the foregoing, provided that the parties acknowledge and agree that a Member may make a distribution of the Locked-Up Securities to its members or shareholders pursuant to Section 2.09(b).
- (b) Notwithstanding the foregoing, the parties acknowledge and agree that any Member that is an entity may distribute the Locked-Up Securities to certain of its members or shareholders at the Closing or after the Closing. In the event that a Member does so distribute such Locked-Up Securities, such Member, as a condition thereof, shall cause such recipient of the Locked-Up Securities to agree to be bound by the provisions of this Section 2.09(b) in a form acceptable to Buyer, acting reasonably, and shall deliver it to Buyer for its acceptance prior to such distribution occurring. Upon Buyer’s confirmation of receipt and acceptance of such agreement, the applicable Member may complete the distribution as contemplated herein.
- (c) The restrictions set forth in Sections 2.09(a) and (b) above shall not apply: (i) if HHR receives an offer, made to all stockholders of HHR, which has not been withdrawn, to enter into a transaction or arrangement, or proposed transaction or arrangement, pursuant to which, if entered into or completed substantially in accordance with its terms, a party could, directly or indirectly acquire an interest (including an economic interest) in, or become the holder of, 100% of the total number of HHR Stock, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buyback, securities issue, reverse takeover, dual-listed company structure or other synthetic merger, transaction or arrangement; (ii) in respect of transfers of Locked-Up Securities to affiliates of any Member, any spouse, parent, child, or grandchild of the undersigned, any company, trust or other entity owned by or maintained for the benefit of the Member, but solely to the extent that such transferee agrees to be bound by the terms of this Section 2.09; (iii) in respect of transfers of Locked-Up Securities to a charitable organization pursuant to a bona fide gift; (iv) if the undersigned is an individual, in connection with estate planning of the undersigned.

**Section 2.10 Post-Closing Adjustment.**

- (a) Within sixty (60) days after the Closing Date, Buyer will prepare and deliver to the Members’ Representative a statement (the “**Closing Statement**”) setting forth Buyer’s calculation of (i) the actual Closing Date Indebtedness as of Closing; (ii) the actual Closing Date Transaction Expenses as of Closing; (iii) the amount, if any, by which the actual Closing Date Cash was either less than \$50,000 or more than \$70,000 as of Closing, (iv) the amount, if any, by which the actual Closing Date Cannabis Inventory was either less than \$130,000 or more than \$150,000 as of Closing; and (v) based on such calculations, Buyer’s calculation of the Initial Cash Purchase Price.



- (b) After receipt of the Closing Statement, the Members' Representative shall have thirty (30) days (the "**Review Period**") to review the Closing Statement. During the Review Period, the Members' Representative shall have full access to the personnel of, and work papers prepared by, Buyer and/or Buyer's representatives to the extent that they relate to the Closing Statement and to such historical financial information (to the extent in Buyer's possession) relating to the Closing Statement as the Members' Representative may reasonably request for the purpose of reviewing the Closing Statement and to prepare a Statement of Objection (defined below); provided, that such access shall be in a manner that does not interfere with the normal business operations of Buyer or the Company.
- (c) On or prior to the last day of the Review Period, the Members' Representative may object to the Closing Statement by delivering to Buyer a written statement setting forth the Members' Representative's objections in reasonable detail, indicating each disputed item or amount and the basis for the Members' Representative's disagreement therewith (the "**Statement of Objection**"); provided, that the Members' Representative may so object to the Closing Statement and the items set forth therein solely based on whether the item objected to contains a mathematical or clerical error, and no other basis. The Members' Representative's failure to include any item listed in the Closing Statement in the Statement of Objection shall be deemed an acceptance of such item and the Closing Statement shall be final and binding upon the parties hereto with respect to all such items. If the Members' Representative fails to deliver the Statement of Objection before the expiration of the Review Period, the Closing Statement shall be deemed to have been accepted by the Members' Representative, and as such, the Closing Statement shall be final and binding upon the parties hereto. If the Members' Representative delivers the Statement of Objection before the expiration of the Review Period, Buyer and the Members' Representative shall, within thirty (30) days (or such other time as Buyer and the Members' Representative shall agree in writing) after the delivery of the Statement of Objection (the "**Resolution Period**"), negotiate in good faith to reach agreement on the disputed items or amounts in order to determine the Initial Cash Purchase Price, which must be within the range of values assigned to each such item in the Closing Statement and the Statement of Objection, respectively. If Buyer and the Members' Representative resolve the disputed items or amounts set forth in the Statement of Objection within the Resolution Period, Buyer and the Members' Representative shall set forth the agreed upon elements of the Initial Cash Purchase Price in a written agreement signed by the Members' Representative and Buyer (a "**Settlement Agreement**") and such Settlement Agreement shall be final and binding upon the parties hereto.
- (d) If the Members' Representative and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objection before expiration of the Resolution Period, then any amounts remaining in dispute ("**Disputed Amounts**") and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to the office of an impartial nationally recognized firm of independent certified public accountants other than Members' accountants or Buyer's accountants (the "**Independent Accountant**") who, acting as expert and not arbitrator, shall resolve the Disputed Amounts only and make any adjustments to the Initial Cash Purchase Price. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and its decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Statement and the Statement of Objection, respectively. Buyer and the Members'

Representative shall instruct the Independent Accountant to make a determination with respect to the Disputed Amounts as soon as practicable within thirty (30) days (or such other time as the parties hereto shall agree in writing) after its engagement, and its resolution of the Disputed Amounts and its adjustments to the Closing Statement shall be set forth in a report (the “**Accountant’s Report**”). All fees and expenses relating to this work of the Independent Accountant shall be borne by Buyer, on the one hand, and Members, on the other hand, in inverse proportion as they may prevail on the matters resolved by the Independent Accountant, which proportionate allocation shall also be determined by the Accountant and be included in the Accountant’s Report. The Accountant’s Report shall be final and binding upon the parties hereto and no party shall seek further recourse through arbitration, courts, other tribunals or otherwise, other than to enforce the Accountant’s Report.

- (e) The final determination of the Initial Cash Purchase Price, either through the Members’ Representative’s failure to timely deliver a Statement of Objection pursuant to Section 2.10(b), the entry into a Settlement Agreement pursuant to Section 2.10(c), or the delivery of an Accountant’s Report pursuant to Section 2.10(d), shall be referred to as the “**Final Cash Payment**.” The post-closing adjustment, if any, shall be an amount equal to the Final Closing Payment minus the Initial Cash Purchase Price, paid pursuant to Section 2.03(c) (the “**Post-Closing Adjustment**”). If the Post-Closing Adjustment is a negative number, then each Member shall pay to Buyer an amount equal to its proportionate share of the Post-Closing Adjustment (and Members shall be jointly and severally liable for, and agree to guarantee and cause each Member to make, such payment), within three (3) Business Days following the determination of the Final Closing Payment by wire transfer of immediately available funds to an account designated in writing by Buyer. If the Post-Closing Adjustment is a positive number, Buyer shall pay to Members an amount equal to the Post-Closing Adjustment within three (3) Business Days following the determination of the Final Closing Payment by wire transfer of immediately available funds to an account designated by the Members’ Representative and distributed to Members by the Members’ Representative, and such Post-Closing Adjustment shall be allocated among Members in accordance with each Members’ proportionate share.
- (f) Any payments made pursuant to this Section 2.10 shall be treated as an adjustment to the Purchase Price by the parties hereto for Tax purposes, unless otherwise required by Law.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE SELLING PARTIES**

Except as set forth in the Disclosure Schedule, the Selling Parties jointly and severally represent and warrant to Buyer that the statements contained in this Article III are true and correct as of the Effective Date and as of the Closing Date.

**Section 3.01 Authority of the Selling Parties.** The Selling Parties have full legal right, power, authority and capacity to enter into this Agreement and the Ancillary Agreements to which each Selling Party is a party, to carry out their respective obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. This Agreement has been, and upon their execution of the Ancillary Agreements to which each Selling Party is a party shall have been, duly executed and delivered by the Selling Parties, and (assuming due authorization, execution, and delivery by each other party hereto and thereto) this Agreement constitutes, and

upon their execution the Ancillary Agreements to which each Selling Party is a party shall constitute, legal, valid, and binding obligations of the Selling Parties, enforceable against the Selling Parties in accordance with their respective terms except to the extent enforcement may be affected by Laws relating to bankruptcy, insolvency, creditors' rights and by the availability of injunctive relief, specific performance and other equitable remedies.

**Section 3.02 Company Organization and Authority; Execution; Enforceability.** The Company (i) is a limited liability company validly existing and in good standing under the laws of the State of Illinois; and (ii) is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary. The Company has all necessary power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary. Section 3.02(a) of the Disclosure Schedule sets forth each jurisdiction where the Company is licensed or qualified to do business. The execution and delivery of this Agreement and the Ancillary Agreements by the Company, the performance by the Company of its obligations hereunder and thereunder and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Company. This Agreement has been, and upon their execution the Ancillary Agreements to which the Company is a party shall have been, duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by each other party hereto and thereto) this Agreement constitutes, and upon their execution the Ancillary Agreements shall constitute, legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms except to the extent enforcement may be affected by Laws relating to bankruptcy, insolvency, creditors' rights and by the availability of injunctive relief, specific performance and other equitable remedies.

**Section 3.03 Subsidiaries.** There are no corporations, limited liability companies, partnerships, joint ventures, associations or other entities in which the Company owns, of record or beneficially, any direct or indirect equity or other interest or any right (contingent or otherwise) to acquire the same, and the Company has no obligation to make any investment (in the form of a loan, capital contribution or otherwise) in any Person.

**Section 3.04 Capitalization.**

- (a) Each Member is the record owner of and has good and valid title to the Acquired Interests, free and clear of all Liens. The Acquired Interests constitute 100% of the total Membership Interests. The Acquired Interests have been duly authorized and are validly issued, fully-paid and non-assessable. Upon consummation of the transactions contemplated by this Agreement, Buyer shall own all of the Acquired Interests, free and clear of all Liens.
- (b) The Acquired Interests were issued in compliance with applicable Laws. The Acquired Interests were not issued in violation of the Organizational Documents of the Company or any other agreement, arrangement, or commitment to which the Members or the Company is a party and are not subject to or in violation of any preemptive or similar rights of any Person.

- (c) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to any Membership Interests in the Company or obligating the Members or the Company to issue or sell any Membership Interests (including the Acquired Interests), or any other interest, in the Company and there are no outstanding securities convertible or exercisable into or exchangeable for Membership Interests of the Company or any other equity security of the Company.
- (d) Other than the Organizational Documents, there are no voting trusts, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Membership Interests.
- (e) The offer, issuance and sale of the Acquired Interests were (a) exempt from the registration and prospectus delivery requirements of the Securities Act of 1933, as amended (the “**Securities Act**”), (b) registered or qualified (or were exempt from registration or qualification) under the registration or qualification requirements of all applicable state securities Laws and (c) accomplished in conformity with all other applicable securities Laws. None of such Acquired Interests are subject to a right of withdrawal or a right of rescission under any federal or state securities or “Blue Sky” Law.

**Section 3.05 No Conflict.** The execution, delivery and performance by the Selling Parties of this Agreement and the Ancillary Agreements to which each is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate, conflict with or result in the breach of any provision of the Organizational Documents of the Company or any of the Members (if an entity); (b) conflict with or result in a violation or breach of any Law or Governmental Order applicable to the Selling Parties or any of their respective assets, properties or businesses, including the Business; (c) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any Contract to which any Selling Party is a party or by which any Selling Party is bound or by which any of the Company’s properties or assets are subject; (d) result in the creation of any Lien on any of the Company’s properties or assets; or (e) conflict with or result in a breach of any of the terms or requirements of, or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any Permit that is held by or on behalf of the Company.

**Section 3.06 Consents.** Except as set forth in Section 3.06 of the Disclosure Schedule, the execution, delivery and performance by the Selling Parties of this Agreement and each Ancillary Agreement to which each is a party do not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority or any other Person.

**Section 3.07 Financial Statements.** Complete copies of the Company’s unaudited annual financial statements consisting of the balance sheet of the Company as of December 31, 2018, and the related statements of income and retained earnings, Member equity and cash flow for the years then ended (the “**Financial Statements**”) have been delivered to the Buyer. The Financial Statements have been prepared in accordance with previously disclosed accounting principles applied on a consistent basis throughout the periods involved. The Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial



condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of December 31, 2018 is referred to herein as the “**Balance Sheet**” and the date thereof as the “**Balance Sheet Date**”.

**Section 3.08 Undisclosed Liabilities.** The Company has no Liabilities, except: (i) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

**Section 3.09 Bank Accounts.** Set forth in Section 3.09 of the Disclosure Schedule is a complete and correct list of all banks or other financial institutions with which the Company has an account, showing the type and account number of each such account, and the names of the persons authorized as signatories thereon or to act or deal in connection therewith.

**Section 3.10 Indebtedness; Payment Obligations.** Set forth in Section 3.10 of the Disclosure Schedule is an accurate and complete summary of all Indebtedness and payment obligations of the Company to any Person as of the Effective Date.

**Section 3.11 Absence of Certain Facts or Events.** Since January 1, 2018, the Business of the Company has been conducted in all material respects in the ordinary course of business consistent with past practice and there has not been with respect to the Company any:

- (a) Material Adverse Effect;
- (b) any damage, destruction or loss to the assets or Business of the Company, whether covered by insurance or not, involving damages, losses or assets valued in excess of \$25,000;
- (c) (A) amendment to or entering into of any employment or independent contractor agreements or any severance or termination agreements with, any increase in the compensation payable or to become payable by the Company to, any employee, independent contractor, manager or officer whose annual remuneration (which, for purposes of this Section 3.11(c)(A) includes base salary and targeted commissions and bonuses) exceeds \$25,000 or (B) any establishment or termination of, or increase in or amendment or modification to the coverage or benefits under any bonus, insurance, pension, retention, transaction bonus, change in control or other Benefit Plan that, in any case, is not in the ordinary course of business, consistent with past practice;
- (d) any issuance, sale, transfer or disposition of Membership Interest or other equity interest of the Company or options or rights to acquire Membership Interest or other equity interest of the Company, any redemption, repurchase or other cancellation or acquisition of outstanding units of Membership Interest or other equity interest of the Company, any declaration, setting aside or payment of any distribution thereon, any recapitalization, reclassification, unit split or reverse unit split, any merger of the Company with any Person, any purchase or other acquisition by the Company of capital stock or other interest in any other Person, any purchase or other acquisition by the Company of all or substantially all of the business or assets of any other Person, any transfer or sale of a substantial portion of the Business or the Company's assets to any Person or any agreement to take any such actions;

- (e) any sale, assignment, modification or transfer outside of the ordinary course of business of any contractual rights, claims or other assets of the Company valued at more than \$25,000 in the aggregate;
- (f) any Lien placed on the Company's assets to secure indebtedness or guaranties, or any other Lien placed on any material asset of the Company;
- (g) the incurrence of any Liability of the Company as a result of indebtedness for borrowed money or guaranties thereof or any capital expenditure, in either case, in excess of \$25,000;
- (h) any failure to pay or perform any obligation of the Company involving more than \$25,000 as, when and to the extent due other than pursuant to a good faith defense or contractual right of setoff;
- (i) any amendment or termination of the Organizational Documents of the Company or amendment, termination or modification of any Material Contract;
- (j) any material transaction entered into or consummated by the Company not in the ordinary course of business;
- (k) any forgiveness or waiver of any obligations or performance (past, present or future) owed to the Company other than in the ordinary course of business;
- (l) any material change in any method of accounting or accounting policy (including with respect to reserves) or policy or procedure relating to financial reporting, internal controls, cash management, accounts receivable collection or accounts payable practices;
- (m) any waiver, settlement or consent to the settlement of, any material claims made by or against the Company or entrance into any consent decree;
- (n) any material change in accounting or Tax principles, methods, entity classification or policies;
- (o) any material change or modification to the credit, collection or payment policies, procedures or practices of the Company;
- (p) any amendment to any Tax Return, any Tax election or modification or revocation of any existing Tax election, entry into any Tax indemnity, sharing or allocation agreement, surrender of any right to claim a refund, offset or other reduction of Taxes, consent to any extension or waiver of the limitations period applicable to any Tax claim or assessment relating to the Company, any change to any Tax accounting method, election or convention, or any settlement or compromise of any Tax claims;
- (q) any hiring or promoting any person as or to (as the case may be) an officer or manager or hiring or promoting any employee who is not an officer or manager, except to fill a vacancy in the ordinary course of business; or
- (r) any agreement to do any of the things described in the preceding clauses.

**Section 3.12 Litigation.** Except as set forth in Section 3.12 of the Disclosure Schedule, for the two-year period prior to the date of this Agreement, there have been no Actions by or against the Company or affecting any of the assets or the Business of the Company, and there are no Actions pending or, to the Company's or Members' Knowledge, threatened, (a) by or against any Selling Party affecting any of the Company properties or assets (or by or against any Affiliate thereof and relating to the Company); or (b) by or against any Selling Party or any Affiliate of any Selling Party that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement or any Ancillary Agreement or the consummation of the transactions contemplated hereby or thereby. Except as set forth in Section 3.12 of the Disclosure Schedule, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action. Except as set forth in Section 3.12 of the Disclosure Schedule since its formation, the Company has not been subject to any Governmental Order, and there is no Governmental Order pending or, to the Company's or Members' Knowledge, threatened against the Company.

**Section 3.13 Compliance with Laws; Permits.**

- (a) The Company has conducted and continues to conduct the Business in accordance in all material respects with all Laws and Governmental Orders applicable to the Company and its assets and the Business, and the Company is not in material violation of any such Law or Governmental Order. No claim has been made by any Governmental Authority to the effect that the Business conducted or any asset owned or used by the Company fails to comply, in any respect, with any Law or Governmental Order.
- (b) Section 3.13 of the Disclosure Schedule contains a complete and accurate list of all Permits held by the Company, and the Company possesses and is in material compliance with all Permits required to operate the Business. Each such Permit is valid and in full force and effect. None of the Permits will be impaired or terminated or become terminable as a result of the transaction contemplated hereby.
- (c) The Company is the holder of the Regulatory License required for the Company to conduct its present Business. The Regulatory License is in full force and effect in all material respects and has not been revoked, suspended, cancelled, rescinded, terminated, modified and has not expired. There are no pending or, to the Company's or Members' Knowledge, threatened Actions by or before any Governmental Authority to revoke, suspend, cancel, rescind, terminate and/or materially adversely modify the Regulatory License.

**Section 3.14 Environmental Matters.**

- (a) The Company is currently and has at all times been in compliance in all material respects with all Environmental Laws, and has not, and the Selling Parties have not, received from any Person any Environmental Notice or Environmental Claim or written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved or is the source of ongoing obligations or requirement.
- (b) The Company possesses and is in compliance in all material respects with all Environmental Permits necessary for the operation of the Business and the ownership, lease, operation or use of the Leased Real Property and the assets of the Company. All Environmental Permits obtained by the Company are in full force and effect in accordance with Environmental Laws. To the Company's or Members' Knowledge, there is no

condition, event, or circumstance that might prevent or impede, after the Closing Date, the ownership, lease, operation, or use of the business or assets of the Company as currently carried out. With respect to any such Environmental Permits, the Selling Parties have undertaken all measures necessary to facilitate transferability of the same and the Selling Parties are not aware of any condition, event, or circumstance that might prevent or impede the transferability of the same nor have they received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the same.

- (c) To the Company's or Members' Knowledge, there has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of the Company or any real property currently or formerly owned, operated, or leased by the Company. The Selling Parties have not received an Environmental Notice that any real property currently or formerly owned, operated or leased in connection with the business of the Company (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material that could reasonably be expected to result in an Environmental Claim against or a violation of Environmental Law or term of any Environmental Permit by the Selling Parties.
- (d) To the Company's or Members' Knowledge, there are no active or abandoned aboveground or underground storage tanks owned or operated by the Company.
- (e) To the Company's or Members' Knowledge, there are no Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company or any predecessors as to which the Selling Parties may retain liability. None of such facilities or locations has been placed or proposed for placement on the National Priorities List under CERCLA or any similar state list. The Selling Parties have not received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage or disposal facilities or locations used by the Company.
- (f) The Selling Parties have not retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.
- (g) The Selling Parties have provided or otherwise made available to Buyer and listed in Section 3.14(g) of the Disclosure Schedule: (i) any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the business or assets of the Company or any currently or formerly owned, operated or leased real property that are in the possession or control of the Selling Parties related to compliance with Environmental Laws, Environmental Claims, an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).
- (h) The Selling Parties are not aware of or reasonably anticipate any condition, event, or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or materially increase the costs associated with the



ownership, lease, operation, performance or use of the business or assets of the Company as currently carried out.

- (i) There are no Environmental Claims pending or, to the Company's or Members' Knowledge, threatened against the Company or the Leased Real Property, and to the Company's or Members' Knowledge, there are no circumstances that could reasonably be expected to form the basis of any such Environmental Claim.
- (j) Neither the execution of this Agreement or the Ancillary Agreements by the Selling Parties, nor the consummation of the transactions contemplated hereby or thereby, will require any notice to or consent of any Governmental Authority or third party pursuant to any applicable Environmental Law or Environmental Permit.

**Section 3.15 Material Contracts.** Section 3.15 of the Disclosure Schedule contains an accurate and complete list of the following outstanding Contracts (including all amendments and supplements thereto) to which the Company is a party or by which the Company or any of its properties or assets is bound (collectively, the "**Material Contracts**");

- (a) each Contract involving aggregate consideration in excess of \$25,000 or requiring performance by any party more than one year from the date hereof, which, in each case, cannot be cancelled by the Company without penalty or without more than 90 days' notice;
- (b) each Contract with employees, third party consultants, independent contractors or other service providers of the Company, which cannot be cancelled by the Company without penalty or without more than 30 days' notice;
- (c) each Contract involving a sharing of profits, losses, costs or Liabilities by the Company with any other Person, including any joint venture, partnership, alliance or similar agreement;
- (d) each Contract containing covenants that restrict or purport to restrict the Company's business activity or limit the freedom of the Company to engage in any line of business, to compete with any Person, to compete in any geographical area or to solicit any Person for business, employment or other purposes;
- (e) each Contract or instrument that creates, gives rise to or otherwise contemplates any Lien over or in respect of any property or asset of the Company;
- (f) each Contract providing for the Company's lease of any Leased Real Property (whether as lessor or lessee);
- (g) each Contract providing for the Company's lease of Personal Property for payments or other consideration of more than \$25,000 in any 12-month period;
- (h) each Contract that relates to Indebtedness;
- (i) each Contract or letter of intent relating to the acquisition or disposition by the Company (whether by merger, consolidation or other business combination, sale of securities, sale of assets or otherwise), outside of the ordinary course of business, of assets or securities;

- (j) each Contract involving monies or anything of value (including any compensation or benefits) that would become payable, owed, accelerated or vested upon the execution of this Agreement or the consummation of the transactions contemplated by this Agreement or any other change of control of the Company;
- (k) each Contract involving capital expenditures in excess of \$25,000;
- (l) each warranty, guaranty or similar undertaking with respect to performance of a Contract extended by the Company, other than in the ordinary course of business;
- (m) each Contract involving loans by the Company to any Person;
- (n) each Contract between the Company, on the one hand, and a Governmental Authority, on the other hand;
- (o) each agency, dealer, distributor, sales representative, marketing or other similar Contract;
- (p) each Contract for management services or financial advisory services (other than any Contract with the Company's accounting advisors);
- (q) each settlement, resolution or similar Contract involving payments by the Company after the Closing or any injunctive or similar equitable obligations on the Company;
- (r) each Contract between the Company, on the one hand, and any Selling Party or any Affiliate of any Selling Party, on the other hand;
- (s) each agreement to enter into any Contract of the type described in subsections (a) through (s) of this Section 3.15; and
- (t) each other Contract that is material to the Company and not previously disclosed pursuant to this Section 3.15.

Each Material Contract is in full force and effect and is valid and binding on and enforceable in accordance with its terms against the Company and, to the Company's or Members' Knowledge, against the other party or parties thereto. The Company is not in default under or in breach of, or in receipt of any written claim of default or breach or any notice of any intention to terminate, any Material Contract. There are no material disputes pending or, to the Company's or Members' Knowledge, threatened under any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of material default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any material right or material obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

**Section 3.16 Intellectual Property.** Section 3.16 of the Disclosure Schedule sets forth a list of all of the Intellectual Property owned by the Company (the "**Company Intellectual Property**"). Except as set forth in Section 3.16 of the Disclosure Schedule, during the two (2) years preceding the date of this Agreement, to the Company's or Members' Knowledge: (i) no claim has been asserted or threatened against the Company to the effect that the operation of the Company's business or the use or registration of the Company Intellectual Property infringes upon or conflicts

with the rights of any person, (ii) no claim has been asserted or notice of infringement given, by the Company against any person, and (iii) no restrictions exist relating to the Company Intellectual Property in connection with their use for the operation of the Company's business.

**Section 3.17 Real Property.**

- (a) The Company does not own nor has it ever owned any real property. The Company does not have any options, written commitments or Contracts to acquire any real property.
- (b) Section 3.17(b) of the Disclosure Schedule lists: (i) each lease, sublease, license or other agreement and any amendments or modifications thereto relating to all Leased Real Property (each a "**Lease**" and collectively, the "**Leases**"), true and complete copies of which have been made available to Buyer, (ii) the street address of each parcel of Leased Real Property, (iii) the identity of the lessor, lessee and current occupant (if different from lessee) of each such parcel of Leased Real Property, and (iv) the current use of each such parcel of Leased Real Property. The Company has a valid and enforceable leasehold interest under each Lease relating to Leased Real Property. Each Lease is in full force and effect and is valid, binding and enforceable in accordance with its terms against the Company and each other party thereto. The Company is not in default nor has it received a notice of default or termination that remains outstanding under any Lease, and to the Company's or Members' Knowledge, no uncured default or breach on the part of the landlord exists under any Lease, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default or permit the termination, modification or acceleration of rent under any such Lease. The Company is in peaceful and undisturbed possession of each parcel of Leased Real Property, the use of the Leased Real Property complies with the terms of the applicable Lease, and to the Company's or Members' Knowledge, there are no contractual or legal restrictions that preclude or restrict the ability to use the Leased Real Property for the purposes for which it is currently being used. The Company has not leased or subleased any parcel or any portion of any parcel of Leased Real Property to any other Person and no other Person has any rights to the use, occupancy or enjoyment thereof. The Leased Real Property comprises all real property used in connection with the business of the Company. The Company is not liable under any lease, sublease, license or other form of occupancy agreement other than the Leases. There are no condemnation proceedings or eminent domain proceedings of any kind pending or, to the Company's or Members' Knowledge, threatened with respect to any of the Leased Real Property, and neither the Company nor any Selling Party has received written notice of any such proceedings.

**Section 3.18 Assets.** Except as set forth in Section 3.18 of the Disclosure Schedule, the Company holds all legal and beneficial right, title and interest in and to all of the assets of the Company, free and clear of any Lien. Immediately following the Closing, all of such assets will be owned, leased or available for use by the Company on terms and conditions substantially identical to those under which, immediately prior to the Closing, the Company owns, leases, uses or holds available for use such assets. Such assets comprise all of the assets, properties and rights used in or necessary to the conduct of the Business and are adequate and sufficient to conduct the Business.

**Section 3.19 Condition of Personal Property.** All items of Personal Property with an individual value greater than \$10,000 are set forth in Section 3.19 of the Disclosure Schedule.

Except as set forth in Section 3.19 of the Disclosure Schedule, all items of Personal Property are in good operating condition and repair (except for ordinary, routine maintenance and repairs that are not material in nature or cost) and are suitable for their intended use in the Business.

**Section 3.20 Employee Benefit Matters.**

- (a) Section 3.20(a) of the Disclosure Schedule sets forth a true and complete list of each (i) “employee benefit plan” (as defined in Section 3(3) of ERISA, whether or not subject to ERISA) and (ii) other profit-sharing, deferred compensation, bonus or incentive, stock option, stock purchase, equity or equity-based, employment, independent contractor, consulting, severance, retention, change-of-control, paid time off, holiday pay, pension, retirement, medical, welfare, fringe and other compensation or benefit plan, policy, program, contract, arrangement or agreement (whether written or unwritten), in either case, sponsored, maintained, contributed to, or required to be contributed to, by the Company for the benefit of any current or former employee, manager, officer or independent contractor of the Company, or with respect to which the Company has or could have any Liability, whether direct or indirect, actual or contingent, whether formal or informal, and whether written or oral, legally binding or not (each, a “**Benefit Plan**” and collectively, “**Benefit Plans**”). With respect to this Section 3.20, the term “Company” includes any ERISA Affiliate of the Company.
- (b) With respect to each Benefit Plan, there are no funded benefit obligations for which contributions have not been made, and all monies withheld for employee paychecks with respect to Benefit Plans have been transferred to the appropriate Benefit Plan within the time required under applicable Law.
- (c) Each Benefit Plan has been maintained, operated and administered at all times in compliance with its terms and applicable Laws, including ERISA and the Code in all material respects. No event has occurred, nor do any circumstances exists, that could reasonably be expected to give rise to any material liability or civil penalty under any Laws with respect to any Benefit Plan. All contributions and other payments required to be made to each Benefit Plan under the terms of that Benefit Plan, ERISA, the Code or any other applicable Law have been timely made and all contributions made have been fully deductible under the Code.
- (d) Neither the execution and delivery of this Agreement or any Ancillary Agreement, nor the consummation of the transactions contemplated hereby could, either alone or in combination with another event, (i) entitle any individual to any severance pay, unemployment compensation, forgiveness of indebtedness or other benefits or compensation; (ii) accelerate the time of payment or vesting, funding, or increase the amount of any compensation due, or in respect of, any individual; (iii) result in or satisfy a condition to the payment of compensation that would, in combination with any other payment, result in an “excess parachute payment” within the meaning of Section 280G of the Code or that would not be deductible under Section 162 or 404 of the Code; or (iv) directly or indirectly cause the Company to transfer or set aside any assets to fund any material benefits under any Benefit Plan. The Company does not have any obligation to indemnify, hold harmless or gross-up any individual with respect to any excise tax imposed under Sections 4999 or 409A of the Code and each Benefit Plan has been maintained,

operated and administered in operational and documentary compliance with Section 409A of the Code.

- (e) Neither the Company nor an ERISA Affiliate maintains, maintained or contributed to within the past five (5) years, any multiemployer plan, within the meaning of Section 3(37) or 4001(a)(3) of ERISA. Neither the Company nor an ERISA Affiliate currently has any liability to make withdrawal liability payments to any multiemployer plan.
- (f) Each Benefit Plan can be amended, suspended or terminated at any time without the consent of any employees, participants, service providers, or insurance companies and without resulting in any Liability to Buyer or its Affiliates for any additional contributions, penalties, premiums, fees, fines, excise taxes or any other charges or Liabilities.

### **Section 3.21 Employees and Contractors.**

- (a) Section 3.21(a) of the Disclosure Schedule sets forth a complete and accurate list of all Persons employed by the Company immediately prior to the Closing (the “**Employees**”), showing as of the Closing Date each Employee’s: (i) name, (ii) job title or position, (iii) location, (iv) date of hire, (v) whether such Employee is full-time, part-time or temporary, (vi) whether such Person is exempt or non-exempt for purposes of the Fair Labor Standards Act and/or similar state Laws, (vii) base salary or hourly rate of base salary, (viii) annual bonus or other incentive compensation opportunity and (ix) the nature and amount of any other regular compensation (e.g., commissions and accrued but unused paid time off/vacation time). Except as set forth on Section 3.21(a) of the Disclosure Schedule, the employment of each Employee (whether or not under any Contract) can be terminated by the Company without notice and without severance, penalty or premium, other than payment of accrued salaries, wages and bonuses or commissions, if any. All salaries, wages, commissions and other compensation and benefits payable to each employee of the Company have been accrued and paid by the Company when due for all periods through the Closing Date. To the Company’s or Members’ Knowledge, no current executive, key Employee or group of Employees has given notice of termination of employment or otherwise disclosed plans to terminate employment with the Company within the next twelve (12) months. No executive or key Employee of the Company is employed under a non-immigrant work visa or other work authorization that is limited in duration.
- (b) Section 3.21(b) of the Disclosure Schedule sets forth a complete and accurate list of all independent contractors currently engaged by the Company, along with the position, date of retention and rate of remuneration, most recent increase (or decrease) in remuneration and amount thereof, for each such independent contractor. Except as set forth on Section 3.21(b) of the Disclosure Schedule, none of such independent contractors is a party to a written Contract with the Company. For purposes of applicable Law, including the Code and the Fair Labor Standards Act, all independent contractors who are currently, or within the last three years have been, engaged by the Company are bona fide independent contractors and not employees of the Company. Except as set forth on Section 3.21(b) of the Disclosure Schedule, each independent contractor engaged by the Company is terminable on not more than 30 days’ notice, without any obligation of the Company to pay a termination fee.



**Section 3.22 Labor Matters.** Except as set forth in Section 3.22 of the Disclosure Schedule, (a) the Company is in material compliance with all Laws regarding employment and employment practices, conditions of employment, wages and hours with respect to the Business, and the payment and withholding of Taxes and other sums as required by the appropriate Governmental Authority, and has withheld and paid to the appropriate Governmental Authority or is holding for payment not yet due to such Governmental Authority all Taxes and other amounts required to be withheld from employees of the Company (and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed); (b) the Company is not engaged in unfair labor practices, and there are no unfair labor practice complaints or grievances pending or, to the Company's or Members' Knowledge, threatened against the Company relating to employees of the Company who are employed in connection with the Business, (c) there are no claims for violations of employment or labor Laws, or age, sex, racial or other employment discrimination pending or, to the Company's or Members' Knowledge, threatened against the Company relating to employees of the Business, and (d) there is no labor strike, dispute or work stoppage pending or, to the Company's or Members' Knowledge, threatened against or involving the Company's business or at the current customer locations which may affect such business or which may interfere with its continued operation, and there has been no strike, walkout or work stoppage involving any of the employees of the Company employed with respect to the Business or at the current customer locations during the twenty-four (24) months prior to the date of this Agreement. The Company has not incurred, and no circumstances exist under which the Company would reasonably be expected to incur, any Liability arising from the failure to pay wages (including overtime wages), from the misclassification of employees as independent contractors and/or from the misclassification of employees as exempt from the requirements of the Fair Labor Standards Act or similar state Laws. The Company is not a joint employer or co-employer for any third party with which it has contracted for labor during the last three years. Except as disclosed in Section 3.22 of the Disclosure Schedule, there is no Action with respect to any employment-related matters, including payment of wages, salary or overtime pay, that has been asserted or is now pending or, to the Company's or Members' Knowledge, threatened by or before any Governmental Authority with respect to any Persons currently or formerly employed (or engaged as an independent contractor) by, or who are or were applicants for employment with, the Company.

**Section 3.23 Taxes.**

- (a) Except as set forth in Section 3.23(a) of the Disclosure Schedule, (i) the Company has timely filed or caused to be filed with the appropriate Taxing Authority all Tax Returns that it was required to file under applicable laws and regulations; (ii) all such Tax Returns were true, correct and complete in all respects and were prepared in substantial compliance with all applicable Laws and regulations; (iii) all Taxes due and owing by the Company (whether or not shown as due on any Tax Return) have been timely paid, and (iv) there are no Liens for Taxes upon the Company or its respective assets, except Liens for current Taxes not yet due and payable. Except as set forth in Section 3.23(a) of the Disclosure Schedule, the Company is not currently the beneficiary of any extension of time within which to file any Tax Return and has not granted any waiver of any statute of limitations with respect to, or any extension of a period for the assessment of, any Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.
- (b) No Member or manager (or employee responsible for Tax matters) of the Company expects any Taxing Authority to assess any additional Taxes for any period for which Tax Returns have been filed.



- (c) Except as set forth on Section 3.23(c) of the Disclosure Schedule, no federal, state, local, or non-U.S. tax audits or administrative or judicial audits, proceedings or other Actions in respect of any Tax are pending or being conducted with respect to the Company. The Company has not received from any federal, state, local, or non-U.S. Taxing Authority (including jurisdictions where the Company has not filed Tax Returns) any (i) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by any taxing authority against the Company. No claim has ever been made by a Taxing Authority in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation in that jurisdiction.
- (d) The Company has timely withheld and timely paid to the proper Taxing Authority all Taxes that it was required to withhold and pay in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party. The Company has properly completed and timely filed all Tax Returns (including, applicable information returns or reports, including IRS Forms 1099 and W-2), that are required to be filed and have, in all material respects, accurately reported all information required to be included on such Tax Returns.
- (e) Section 3.23(e) of the Disclosure Schedule lists all federal, state, local, and non-U.S. income Tax Returns filed with respect to the Company for taxable periods ended on or after December 31, 2015, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Members' Representative has delivered to Buyer correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Company filed or received since December 31, 2015.
- (f) The Company is not a party to any Tax sharing or allocation agreement, arrangement or Contract with any Person pursuant to which the Company would have liability for Taxes of another Person following the Closing. The Company (i) has not been a member of an affiliated group under Section 1504(a) of the Code or any similar group defined under a similar provision of state, local, or non-U.S. law (other than a group the common parent of which was the Company), or (ii) does not have any Liability for Taxes of another Person under Section 1.1502-6 of the Treasury Regulations (or any similar provision or state, local, or non-U.S. law), as a transferee or successor, by contract, or otherwise.
- (g) The Company is not a party to any agreement, contract, arrangement or plan that has resulted or could result, separately or in the aggregate, in the payment of (i) any "excess parachute payment" within the meaning of Code Section 280G (or any corresponding provision of state, local, or non-U.S. Tax law) or (ii) any amount that will not be fully deductible as a result of Code §162(m) (or any corresponding provision of state, local, or non-U.S. Tax law).
- (h) The Company has not been a United States real property holding corporation within the meaning of Code §897(c)(2) during the applicable period specified in Code §897(c)(1)(A)(ii). The Company has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code Section 6662.

- (i) Section 3.23(i) of the Disclosure Schedule sets forth the following information with respect to the Company as of the most recent practicable date: (A) the basis of the Company in its respective assets; (B) the amount of any net operating loss, net capital loss, unused investment or other credit, unused foreign tax credit, or excess charitable contribution allocable to the Company; and (C) the amount of any deferred gain or loss allocable to the Company arising out of any intercompany transaction.
- (j) The unpaid Taxes of the Company (i) did not, as of the month ended February 28, 2019, exceed the reserve for any Liabilities for Taxes (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Balance Sheet (rather than in any notes thereto), and (ii) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Company in filing its respective Tax Returns. Since the Balance Sheet Date, the Company has not incurred any liability for Taxes arising from extraordinary gains or losses, as that term is used in GAAP, outside the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).
- (k) The Company has not been a party to any “listed transaction,” as defined in Section 6707A(c)(2) of the Code and Section 1.6011-4(b)(2) of the Treasury Regulations.
- (l) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any:
  - (i) change in method of accounting for a taxable period (or portion thereof) ending on or prior to the Closing Date;
  - (ii) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date;
  - (iii) “closing agreement,” as described in Code Section 7121 (or any corresponding provision of state, local, or non-U.S. income Tax law) executed on or prior to the Closing Date;
  - (iv) intercompany transaction, as defined in Section 1.1502-13 of the Treasury Regulations, or any excess loss account, as defined in Section 1.1502-19 of the Treasury Regulations, (or any corresponding provision of state, local or non-U.S. income Tax law);
  - (v) installment sale or open transaction made on or prior to the Closing Date for which payments were received prior to the Closing Date;
  - (vi) prepaid amount received on or prior to the Closing Date; or
  - (vii) election under Code Section 108(i).
- (m) The Company has collected all sales tax in the ordinary course of business and remitted such sales tax amount to the applicable Taxing Authority, or have collected sales tax exemption certificates from all entities from which the Company does not collect sales tax.

- (n) The Company has not distributed the Membership Interests of another Person, or had its Membership Interests distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Code Section 355 or Code Section 361.
- (o) The Company has never (i) had a permanent establishment in any country other than the United States, or (ii) engaged in activities in any jurisdiction other than the United States.
- (p) The Company has not received any letter ruling from the Internal Revenue Service (or any comparable ruling from any other Taxing Authority).

**Section 3.24 Insurance Policies.** Section 3.24 of the Disclosure Schedule contains a complete and correct list (by type of policy, form of coverage, name of insurer and expiration date) of all insurance policies, directors' and officers' liability policies, and formal self-insurance programs, and other forms of insurance and all fidelity bonds held by or applicable to the Company and its assets, properties, employees or Benefit Plan fiduciaries (the "**Insurance Policies**"). All Insurance Policies are in full force and effect, and the Company is not in default with respect to any provision in any Insurance Policy, and all such policies and all premiums due thereunder have been paid. The Company has not received any notice of cancellation or non-renewal of any Insurance Policy, and the Company has not been denied any claim or made any claims which subject to reservation of rights of the insurer. With respect to each Insurance Policy, since the last renewal date of such policy, the Company has not received any notice of any material change in its relationship with its respective insurer or the premiums payable pursuant to such policy. All Insurance Policies have been made available to Buyer.

**Section 3.25 Inventory.** Section 3.25 of the Disclosure Schedule sets forth a complete list of all of the Cannabis Inventory owned by the Company as of the Effective Date (the "**Inventory Report**"). The Inventory Report is, and the Updated Inventory Report delivered pursuant to Section 2.05(j) will be, true, complete and correct and prepared in a manner disclosed to the Buyer.

**Section 3.26 Affiliate Transactions.** Except as set forth in Section 3.26 of the Disclosure Schedule, no current or former manager of the Company, nor any Selling Party, nor any immediate family member or Affiliate of any of the foregoing (whether directly or indirectly through an Affiliate of such Person): (a) is, or has been within the two (2) years preceding the date of this Agreement, a party to any Contract (other than ordinary course employment Contracts that have been provided to Buyer) with the Company; (b) has, or has had during the last two (2) years preceding the date of this Agreement, any direct or indirect interest (i) in any material property, asset or right that is owned or used by the Company in the conduct of the Business, or (ii) in any Person that is a client, customer, supplier, lessor, lessee, debtor, creditor or competitor of the Company; or (c) is, or was during the last two years preceding the date of this Agreement, a manager, officer or employee of any Person that is a client, customer, supplier, lessor, lessee, debtor, creditor or competitor of the Company.

**Section 3.27 Brokers.** Except as set forth in Section 3.27 of the Disclosure Schedule, no broker, finder, investment banker or financial advisor is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of any Selling Party.

**Section 3.28 Full Disclosure.** To the Company's or Members' Knowledge, the Selling Parties' representations and warranties in this Agreement are materially complete and nothing has been materially omitted from the Disclosure Schedules or any certificate or other instrument furnished or to be furnished to Buyer pursuant to this Agreement the absence of which could cause a Material Adverse Effect.

**Section 3.29 Investor Representations.** In connection with the payment by Buyer of the Stock Payment, and the Members' acquisition of HHR Stock, each of the Members represent, warrant, and acknowledge the following:

- (a) **Investment Purpose.** As of the Effective Date, each Member understands and agrees that the consummation of the transaction contemplated by this Agreement including the delivery of the HHR Stock to the Members in exchange for the Acquired Interests constitutes the offer and sale of securities under the Securities Act, applicable state statutes, Canadian Securities Laws, and that the HHR Stock is being acquired for the Members' own account and not with a present view towards the public sale or distribution thereof, except pursuant to sales registered or exempted from registration under the Securities Act. At the time each Member was offered the HHR Stock, the Member was, and at the date hereof it is, and it will be, an "accredited investor" as defined in Rule 501(a) under the Securities Act (an "**Accredited Investor**").
- (b) **Canadian Securities Laws.**
  - (i) Each Member is acquiring the HHR Stock as principal and is an "accredited investor" within the meaning of National Instrument 45-106 – *Prospectus Exemptions* of the Canadian Securities Administrators. If applicable, each Member was not created, and is not being used, solely to purchase and hold securities in reliance on an exemption from prospectus requirements under applicable securities laws.
  - (ii) HHR is relying on an exemption from the requirement to provide the Members with a prospectus under applicable Canadian securities Laws and, as a consequence of acquiring the HHR Stock pursuant to such exemption, certain protections, rights and remedies provided by applicable securities laws, including statutory rights of rescission or damages, will not be available to each Member, and each Member may not receive information that would otherwise be required to be provided to it under applicable securities laws.
  - (iii) The HHR Stock will be subject to statutory resale restrictions under applicable Canadian securities Laws, and each Member covenants that it will not resell the HHR Stock except in compliance with such applicable Canadian securities Laws and each Member acknowledges that it is solely responsible (and HHR is not in any way responsible) for such compliance. Each Member acknowledges that the certificates representing the HHR Stock will bear the following legends:

“UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MUST NOT TRADE THE SECURITIES BEFORE [INSERT DATE THAT IS 4 MONTHS AND ONE DAY AFTER CLOSING DATE].”

Each Member further acknowledges that in the event such Member converts the HHR Stock held by it into subordinate voting shares of HHR prior to the date which is four months and one day after the Closing Date, the certificates representing such subordinate voting shares received on conversion thereof shall bear the above legend.

- (iv) Each Member acknowledges that it has been notified by HHR: (a) (i) of the delivery to the British Columbia Securities Commission (the “BCSC”) of certain personal information pertaining to each Member, including each Member's full name, address and telephone number, the number and type of securities purchased, the total purchase price, the exemption relied upon and the date of distribution; (ii) that this information is being collected indirectly by the BCSC under the authority granted to it in securities legislation; (iii) that this information is being collected for the purposes of the administration and enforcement of the securities legislation of British Columbia; and (iv) that each Member may contact the public official at the BCSC at P.O. Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, British Columbia V7Y 1L2, or at (604) 899-6854 or 1-800-373-6393, or by facsimile at (604) 899-6581 or email at [inquiries@bcsc.bc.ca](mailto:inquiries@bcsc.bc.ca) regarding any questions about the BCSC's indirect collection of this information.
- (v) Each Member acknowledges and consents to: (i) the fact that HHR is collecting personal information (as that term is defined under applicable privacy legislation, including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) and any other applicable similar, replacement or supplemental provincial or federal legislation or laws in effect from time to time); (ii) HHR retaining such personal information for as long as permitted or required by applicable law or business practices; (iii) the fact that HHR may be required by applicable securities laws, the rules and policies of any stock exchange or the rules of the Investment Industry Regulatory Organization of Canada to provide regulatory authorities with any personal information provided by each Member in or in connection with this Agreement, including disclosure to the CSE; and (iv) the collection, use and disclosure of each Member's personal information by the CSE.
- (c) Reliance on Exemptions. Such Member understands that the HHR Stock is being offered and sold to such Member in reliance upon specific exemptions from the registration requirements of United States federal and state securities Laws and Canadian securities Laws and that the Company is relying upon the truth and accuracy of, and the Member's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Member set forth herein in order to determine the availability of such exemptions and the eligibility of the Member to acquire the HHR Stock.
- (d) Information. Such Member and his or her advisors, if any, have been furnished with all materials relating to the business, finances and operations of HHR and materials relating to the offer and sale of the HHR Stock which have been requested by such Member or his or her advisors. Such Member and his or her advisors, if any, have been afforded the opportunity to ask questions of Buyer. Such Member understands that his or her investment in the HHR Stock involves a significant degree of risk.
- (e) Governmental Review. Each Member understands that no United States federal or state agency or Canadian federal or provincial agency or any other Governmental Authority has



passed on or made recommendations or endorsement of the HHR Stock or the suitability of the investment in the HHR Stock nor have such authorities passed upon or endorsed the merits of the transactions set forth herein.

- (f) Transfer or Re-sale. Each Member understands that the sale or re-sale of the HHR Stock have not been registered under the Securities Act or any applicable state securities Laws and Canadian securities Laws, and that the HHR Stock may not be transferred unless then permitted under applicable securities laws. Further, each Member covenants that it will not resell the HHR Stock except in compliance with such Laws and each Member acknowledges that he or she will be solely responsible (and Buyer is not in any way responsible) for such compliance.
- (g) Legends. Any legend required by the securities Laws of any state or province, to the extent such Laws are applicable to the HHR Stock represented by the certificate or other evidence so legended, shall be included on any certificates representing or other applicable evidence of the HHR Stock, including without limitation a legend consistent with Section 2.5 of National Instrument 45-102. Each Member also understands that the HHR Stock may bear the following or a substantially similar legend:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SHARES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION ARE NOT REQUIRED. ANY TRANSFER OF THE ACQUISITION SHARES REPRESENTED BY THIS CERTIFICATE IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS WHICH ARE SET FORTH HEREIN.

- (h) No Rights Prior to Issuance. Each Member understands that prior to the issuance of the HHR Stock, no Member has any rights as a shareholder of HHR and thus has no rights to receive notice of shareholder meetings, voting rights, participation rights in any transactions involving a shareholder of HHR, dividends or distributions to shareholders of HHR, or proceeds from any transaction involving HHR, participation rights in the liquidation, dissolution or winding-up of HHR, conversion or other rights as shareholder of HHR.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to the Selling Parties that the statements contained in this Article IV are true and correct as of the Effective Date and as of the Closing Date.

**Section 4.01 Organization and Authority; Execution; Enforceability.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements by Buyer, the performance by Buyer of its obligations



hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been, and upon their execution the Ancillary Agreements to which Buyer is a party shall have been, duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by each other party hereto and thereto) this Agreement constitutes, and upon their execution the Ancillary Agreements shall constitute, legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms except to the extent enforcement may be affected by Laws relating to bankruptcy, insolvency, creditors' rights and by the availability of injunctive relief, specific performance and other equitable remedies.

**Section 4.02 No Conflict.** The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements to which each is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate, conflict with or result in the breach of any provision of the Organizational Documents of Buyer; (b) conflict with or result in a violation or breach of any Law or Governmental Order applicable to Buyer; or (c) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any Contract to which Buyer is a party or by which Buyer is bound or by which any of Buyer's properties or assets are subject.

**Section 4.03 Consents.** Except as set forth in Schedule 4.03, the execution, delivery and performance by Buyer of this Agreement and each Ancillary Agreement to which each is a party do not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority or any other Person.

**Section 4.04 Litigation.** There are no Actions pending or, to Buyer's Knowledge, threatened, by or against Buyer or any Affiliate of Buyer that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement or any Ancillary Agreement or the consummation of the transactions contemplated hereby or thereby.

**Section 4.05 Brokers.** No broker, finder, investment banker or financial advisor is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

**Section 4.07 Sufficient Assets.** Buyer has sufficient cash on hand or other sources of available funds to enable it to make the Cash Payment in accordance with the terms of this Agreement and satisfy its obligations under the Note as contemplated thereunder.

**Section 4.08 Non-Reliance.** Buyer acknowledges and agrees that in entering into this Agreement it has not relied and is not relying on any representations, warranties or other statements whatsoever, whether written or oral (from or by Company or any Member) other than those expressly set out in this Agreement and that it will not have any right or remedy rising out of any representation, warranty or other statement not expressly set out in this Agreement.

## ARTICLE V. CONDITIONS TO THE CLOSING; TERMINATION

**Section 5.01 Condition to the Obligations of Buyer.** The obligation of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions, any or all of which Buyer may waive in writing, at its sole and absolute discretion:

- (a) Each of the representations and warranties made by each of the Selling Parties in this Agreement shall have been true and correct when made and shall be true and correct in all material respects as of the Closing Date;
- (b) Each of the Selling Parties shall have performed or complied with all covenants and conditions required by this Agreement to be performed or complied with by each of the Selling Parties prior to or at the Closing;
- (c) No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any Governmental Authority to enjoin, restrain, prohibit, or obtain damages in respect of, or which is related to, or arises out of, this Agreement or the consummation of the transactions contemplated hereby;
- (d) No Material Adverse Effect shall have occurred with respect to the Company from the Effective Date to the Closing;
- (e) Within thirty (30) days of the Effective Date, or such earlier date as is feasible, as determined by Buyer in consultation with the Member Representative, the Company shall submit for approval all necessary documentation to the IDFPR in connection with (i) the transactions contemplated by this Agreement, including without limitation, Buyer acquiring the Acquired Interests and becoming the sole member of the Company, and (ii) Buyer conducting the Company's business under the tradename selected by Buyer, all in accordance with 68 Ill. Admin. Code 1290.130(f) (collectively, the **"IDFPR Approval"**);
- (f) All consents, approvals, waivers or amendments arising from any and all Contracts, Regulatory Licenses, Permits, trademarks and other intangible assets in connection with the transactions contemplated herein or for the continued operation of the Company after the Closing on the basis as presently operated set forth on Schedule 5.01(f), including without limitation, the IDFPR Approval and such amendments to the Leases as Buyer deems appropriate, shall have been obtained;
- (g) The resolutions adopted by the Members and manager (or its equivalent) of the Company and any Member (if an entity) authorizing the execution, delivery and performance of this Agreement, the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby shall remain valid; and
- (h) Provide evidence that Company has maintained and not transferred or made any withdrawals from the escrow account with the State of Illinois in the Company's name in the amount of \$50,000, which was established prior to Closing in connection with Company's Permits.

**Section 5.02 Condition to the Obligations of the Selling Parties.** The obligations of the Selling Parties to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions, any or all of which the Members' Representative may waive in writing, at his or her sole and absolute discretion:

- (a) Each of the representations and warranties made by Buyer in this Agreement shall have been true and correct when made and shall be true and correct in all material respects as of the Closing Date;

- (b) Buyer shall have performed or complied with all covenants and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing;
- (c) No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any Governmental Authority to enjoin, restrain, prohibit, or obtain damages in respect of, or which is related to, or arises out of, this Agreement or the consummation of the transactions contemplated hereby; and

**Section 5.03 Termination.** This Agreement may be terminated at any time prior to the Closing as follows:

- (a) by mutual written consent of Buyer and the Members' Representative;
- (b) by Buyer by written notice to the Members' Representative if (i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by any of the Selling Parties pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 5.01, and such breach, inaccuracy or failure has not been waived by Buyer or cured by the Selling Parties within five Business Days of the Members' Representative's receipt of written notice of such breach from Buyer or which by its nature or timing cannot reasonably be cured by the Termination Date; or (ii) any of the conditions set forth in Section 5.01 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Termination Date; provided, however, that the right to terminate this Agreement under this Section 5.03(b) shall not be available to Buyer if Buyer's failure to perform or comply with any of the covenants, agreements or conditions of this Agreement has been a principal cause of, or results in, the failure of the Closing to occur on or before the Termination Date;
- (c) by the Members' Representative, by written notice to Buyer if (i) no Selling Party is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 5.02 and such breach, inaccuracy or failure has not been waived by the Selling Parties or cured by Buyer within five Business Days of Buyer's receipt of written notice of such breach from the Selling Parties or which by its nature or timing cannot reasonably be cured by the Termination Date; or (ii) any of the conditions set forth in Section 5.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Termination Date; provided, however that the right to terminate this Agreement under this Section 5.03(c) shall not be available to the Members if any Selling Party's failure to perform or comply with any of the covenants, agreements or conditions of this Agreement has been a principal cause of, or results in, the failure of the Closing to occur on or before the Termination Date; or
- (d) by Buyer upon written notice to the Members' Representative in the event that at any time prior to the Closing there shall have occurred a Material Adverse Effect;
- (e) by Buyer or the Members, acting unanimously, in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental

Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

**Section 5.04 Effect of Termination.** If this Agreement is terminated in accordance with Section 5.03, this Agreement shall become void and of no further force and effect with no liability to any Person on the part of any party hereto (or any officer, agent, employee, direct or indirect holder of any equity interest or securities, or Affiliates of any Party); provided, however, that this Section 5.04 and Article VIII shall survive the termination of this Agreement and nothing herein shall relieve any party hereto from any liability for fraud, intentional misconduct or any willful breach of the provisions of this Agreement prior to the termination of this Agreement.

## **ARTICLE VI. ADDITIONAL COVENANTS OF THE PARTIES**

**Section 6.01 Access to Information.** From the date hereof until the Closing, the Members shall, and shall cause the Company to, (a) afford the officers, employees and representatives of Buyer (including independent public accountants and attorneys) reasonable access to and the right to inspect all of the Leased Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to the Company; (b) furnish Buyer and its representatives with such financial, operating and other data and information related to the Company as Buyer or any of its representatives may reasonably request; and (c) instruct the representatives of the Company to cooperate with Buyer in its investigation of the Company. Any investigation pursuant to this Section 6.01 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty, or agreement given or made by any Selling Party in this Agreement.

### **Section 6.02 Preserve Accuracy of Representations and Warranties; Notification of Certain Matters.**

- (a) Each of the Selling Parties and Buyer shall refrain from taking any action, or from not taking any action, which would render any of its representations or warranties contained in Article III or IV, respectively, untrue or inaccurate. Each of the Selling Parties and Buyer shall promptly notify Buyer or the Members' Representative, respectively, of (i) any event or matter that would reasonably be expected to cause any of its representations or warranties contained in Article III or IV, respectively, to be untrue or inaccurate or (ii) any Action that shall be instituted or threatened against it to restrain, prohibit or otherwise challenge the legality of any transaction contemplated by this Agreement.
- (b) From the Effective Date until the Closing, Members' Representative shall promptly notify Buyer of (i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by the Selling Parties hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 5.02 to be satisfied; (ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and (iv) any Action commenced or, to



Company's or Members' Knowledge, threatened against, relating to or involving or otherwise affecting the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.10 or that relates to the consummation of the transactions contemplated by this Agreement. For the avoidance of doubt, no notice under Section 6.02(a) or this Section 6.02 (b) shall be deemed to have modified any representation or warranty or cured any breach or relieved any party hereto of any obligation or liability under this Agreement.

**Section 6.03 Government Approvals and Consents.**

- (a) Upon the terms and subject to the conditions of this Agreement, each party hereto shall use its reasonable efforts to consummate the transactions contemplated by this Agreement as promptly as practicable. In furtherance of the foregoing, each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions (including without limitation, those required to (A) obtain the IDFPR Approval and (B) provide notice to the City Manager and Director of Community Development of the City of Highland Park, Illinois) required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Agreements. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders, and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.
- (b) Without limiting the generality of the parties' undertakings pursuant to Section 6.03(a) above, each of the parties hereto shall use all reasonable efforts to: (i) respond to any inquiries by any Governmental Authority regarding the IDFPR Approval and the transactions contemplated by this Agreement or any Ancillary Agreement; (ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Agreement; and (iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Agreement has been issued, to have such Governmental Order vacated or lifted.
- (c) If any consent, approval, authorization or amendment necessary to preserve any right or benefit under any Contract or Lease to which the Company is a party is not obtained prior to the Closing, the Members' Representative shall, subsequent to the Closing, cooperate with Buyer and the Company in attempting to obtain such consent, approval, authorization or amendment as promptly thereafter as practicable. If such consent, approval, authorization or amendment cannot be obtained, the Members shall use their reasonable efforts to provide the Company with the rights and benefits of the affected Contract or Lease for the term thereof, and, if the Members provide such rights and benefits, the Company shall assume all obligations and burdens thereunder.
- (d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in

connection with the IDFPR Approval and the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Members or the Company with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

- (e) Notwithstanding the foregoing, nothing in this Section 6.03 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, the Company or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

**Section 6.04 Conduct of Business Prior to Closing.** From the Effective Date until the Closing Date, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), the Company shall, and the Members and the Members' Representative shall cause the Company to: (i) operate, conduct and carry on the business of the Company only in the ordinary course and consistent with past practice; (ii) maintain and keep its properties in states of good repair and condition as at present, except for depreciation due to ordinary wear and tear and damage due to casualty; (iii) maintain in full force and effect insurance comparable in amount and in scope of coverage to that now maintained by it; (iv) perform in all material respects all of its obligations under material contracts, leases, and instruments relating to or affecting its assets, properties, and business; (v) use its commercially reasonable efforts to maintain and preserve its business organization intact, to retain its key employees, and to maintain its relationship with its material suppliers and customers; and (vi) fully comply with and perform in all material respects all obligations and duties imposed on it by all federal and state Laws and all rules, regulations, and orders imposed by Governmental Authorities. Notwithstanding the foregoing, except as expressly required by this Agreement or with the prior written consent of Buyer, the Company shall not, and the Members shall cause the Company not to:

- (a) except for cash distributions pursuant to Section 2.03, (i) make any distributions in respect of any of its Membership Interests, or (ii) repurchase, redeem or otherwise acquire or modify the terms of any of its Membership Interests or any of its other securities;
- (b) form any direct or indirect subsidiary of the Company or windup, liquidate, dissolve or terminate the Company;



- (c) (i) make any voluntary declaration of, or initiate any proceedings in, bankruptcy or insolvency or filing any petition for relief with respect to the Company, (ii) make any assignment for the benefit of creditors on behalf of the Company, or (iii) apply for the appointment of a custodian, receiver or trustee for the Company;
- (d) amend, modify, waive or rescind any of the Organizational Documents of the Company;
- (e) make any capital expenditure(s) or enter into any Contract(s) therefor that is in excess of \$10,000 individually or \$50,000 in the aggregate;
- (f) enter into any Contract that (i) would have been required to be set forth on Section 3.13 of the Disclosure Schedule if in effect on the date hereof, (ii) is outside the ordinary course of business consistent with past practice or (iii) cannot be assigned or transferred to Buyer;
- (g) enter into or modify any Contract, Lease or transaction with any Affiliate, Member, manager, officer, employee or consultant of the Company;
- (h) terminate, rescind, amend or otherwise modify, or grant any waiver under, any Material Contract or Lease;
- (i) enter into any Contract for the purchase of any real property or the sale or lease (including any extension thereof) of any Leased Real Property, or any amendment thereto;
- (j) acquire by merging or consolidating the Company with, or purchase any of the equity interests or material assets of, directly or indirectly, any other Person or any business or division thereof;
- (k) cancel any Indebtedness owed to or claims held by the Company or waive any other rights held by the Company;
- (l) create, incur, assume, modify or amend the terms of any Indebtedness or enter into, as lessee, any Capital Lease;
- (m) institute, abandon, settle or compromise or make any material decision with respect to any pending or threatened claim or Action by, against or involving the Company, including any governmental, administrative or regulatory investigation, audit or inquiry;
- (n) make or change any election, change an annual accounting period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment relating to the Company, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to the Company, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax, if such election, adoption, change, amendment, agreement, settlement, surrender, consent or other action would have the effect of increasing the Tax liability of the Company for any period ending after the Closing Date or decreasing any Tax attribute of the Company existing on the Closing Date;
- (o) establish or increase any profit-sharing, bonus, incentive, deferred compensation, insurance, pension, retirement, medical, hospital, disability, welfare or other employee

benefit with respect to employees or consultants of the Company (or any other Person who provides services to the Company); or

- (p) make any increase or, except with respect to an employee having an annual base salary of less than \$25,000 and in the ordinary course of business consistent with past practices, decrease in the compensation (including base salary, wages and bonus opportunities) of the managers, officers, employees or consultants of the Company (or any other Person who provides services to the Company).

#### **Section 6.05 Tax Matters and Tax Returns.**

- (a) In the case of any taxable period that includes (but does not end on) the Closing Date (a “**Straddle Period**”), the amount of any Taxes based on or measured by income, receipts, or payroll of the Company for all taxable periods ending on or before the Closing Date and the portion through the end of the Closing Date for any taxable period that includes (but does not end on) the Closing Date (“**Pre-Closing Tax Period**”) shall be determined based on an interim closing of the books as of the close of business on the Closing Date (and for such purpose, the taxable period of any partnership or other pass-through entity in which the Company holds a beneficial interest shall be deemed to terminate at such time) and the amount of other Taxes of Company for a Straddle Period that relates to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period.
- (b) The Members’ Representative shall prepare, or cause to be prepared, and file, or cause to be filed (taking into account all extensions properly obtained), all Tax Returns required to be filed by the Company prior to the Closing. The Members shall permit the Buyer to review and comment on each such Tax Return described in the prior sentence at least ten (10) days prior to filing and, with respect to any such Tax Return, and shall make all changes to such Tax Returns as are requested by Buyer. All Tax Returns to be prepared by or for the Company pursuant to this Section 6.05(b) shall be prepared in a manner consistent with the past practice of the Company, except as otherwise required by Law, this Agreement, or as reasonably agreed to by the Members and the Buyer.
- (c) Buyer shall prepare, or cause to be prepared, and file, or cause to be filed (taking into account all extensions properly obtained), all Tax Returns required to be filed by the Company after the Closing. Each such Tax Return shall be prepared in a manner consistent with past practice and without a change of any election or any accounting method, except as otherwise required by Law, this Agreement, or as reasonably determined by Buyer.
- (d) Buyer, Company, and the Members shall cooperate fully, as and to the extent reasonably requested by any other party, in connection with the filing of Tax Returns pursuant to this Section 6.05 and any audit, litigation, proceeding or other Action with respect to Taxes of the Company.
- (e) The Company and the Members’ Representative agree (i) to retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to

the extent notified by Buyer or the Members, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any Taxing Authority, and (ii) to give the other applicable party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other applicable party so requests, the Company or the Members' Representative, as the case may be, shall allow the other applicable party to take possession of such books and records.

- (f) Buyer and the Members' Representative further agree, upon request, to use their best efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including with respect to the transactions contemplated hereby).
- (g) Buyer and Members' Representative further agree, upon request, to provide the other applicable party with all information that either party may be required to report pursuant to Code Section 6043, or Code Section 6043A, or Treasury Regulations promulgated thereunder.
- (h) All tax-sharing agreements or similar agreements with respect to or involving the Company shall be terminated as of the Closing Date and, after the Closing Date, the Company shall not be bound thereby or have any liability thereunder.

**Section 6.06 Public Disclosure.** The press releases by each of Buyer and the Company or any Member with respect to the execution of this Agreement and the consummation of the transactions contemplated hereby shall be reasonably acceptable to Buyer and the Members' Representative. Except as set forth in the immediately preceding sentence, no party hereto shall issue any press release or make any public statement or disclosure with respect to this Agreement or the transactions contemplated hereby from the Effective Date through the Closing without the prior written consent of Buyer and the Members' Representative, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Buyer and its Affiliates may, without the prior written consent of the Members' Representative, (a) issue any press release or make any public statement or disclosure as may be required by applicable Law or the applicable rules of the Canadian Stock Exchange, or (b) make any public statement or disclosure to the extent the substance of such public statement or disclosure is consistent with any previous press release, statement or disclosure made in accordance with, or permitted by, this Section 6.06. After the Closing, except as set forth in the first sentence of this Section 6.06, no party other than Buyer or its Affiliates shall issue any press release or make any public statement with respect to the Agreement or the transactions contemplated hereby.

**Section 6.07 Acquisition Proposals.** The Selling Parties shall not, and shall cause their Affiliates and their respective, managers, officers, employees, investment bankers, attorneys, accountants and other representatives not to, directly or indirectly, initiate, solicit or encourage, or furnish information to or engage in any discussions or negotiations of any type with any other Person in connection with, or enter into any confidentiality agreement, letter of intent or purchase agreement, merger agreement or other similar agreement with any other Person, with respect to any inquiry, proposal or offer from any Person (an "**Acquisition Proposal**") concerning (a) a merger, consolidation, liquidation, recapitalization or other business combination transaction involving the Company; (b) the issuance or acquisition of Membership Interests in the Company; or (c) the sale, lease, exchange or other disposition of any significant portion of the Company's properties or assets. In addition to the other obligations under this Section 6.07, the Selling Parties

shall promptly (and in any event within three (3) Business Days after receipt thereof by Any Selling Party or its representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request or inquiry, and the identity of the Person making the same. The Selling Parties agree that the rights and remedies for noncompliance with this Section 6.07 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

**Section 6.08 Release.** Effective as of the Closing, each Member on behalf of itself and its Affiliates or any Person claiming by or through it or any of them hereby irrevocably waives, releases, remises and forever discharges any and all rights and claims that it, or any of such Members' Affiliates, has had, now has or might now have against the Company and its Affiliates that arose, occurred or existed on or before the Closing Date (whether accrued, absolute, contingent, unliquidated or otherwise and whether known or unknown), except for (a) rights and claims arising from or in connection with this Agreement or any other agreements entered into in connection with this Agreement and (b) rights to indemnification pursuant to Article VII.

## ARTICLE VII. INDEMNIFICATION

### **Section 7.01 Survival.**

- (a) The representations and warranties of the Selling Parties contained in this Agreement shall survive the Closing until the date that is twelve (12) months after the Closing Date (the "**General Survival Date**"); provided, however, that (i) the representations and warranties of the Selling Parties contained in Section 3.01 (Authority of the Selling Parties), Section 3.02 (Organization and Authority; Execution; Enforceability), Section 3.04 (Capitalization), Section 3.10 (Indebtedness; Payment Obligations) and Section 3.27 (Brokers) shall survive the Closing indefinitely, and (ii) the representations and warranties of the Selling Parties contained in Section 3.23 (Taxes) shall survive until sixty (60) days after the expiration of the relevant statute of limitations with respect to the underlying subject matter. If written notice of a claim has been given prior to the expiration of the applicable representations and warranties by Buyer to Members' Representative, then the relevant representations and warranties shall survive as to such claim, until such claim has been finally resolved.
- (b) The representations and warranties of Buyer contained in this Agreement shall survive the Closing until the General Survival Date; provided, however, that the representations and warranties of Buyer contained in Section 4.01 (Organization and Authority; Execution; Enforceability) and Section 4.05 (Brokers) shall survive indefinitely. If written notice of a claim has been given prior to the expiration of the applicable representations and warranties by the Members' Representative to Buyer, then the relevant representations and warranties shall survive as to such claim, until such claim has been finally resolved.
- (c) The covenants and other agreements contained in this Agreement shall survive the Closing and remain in full force and effect until fully performed in accordance with their terms.

- (d) No claim for indemnification may be asserted against any party for breach of any representation, warranty, covenant or agreement contained herein, unless written notice of such claim is received by such party describing in reasonable detail, to the extent practicable in light of facts then known, the facts and circumstances with respect to the subject matter of such claim on or prior to the date on which the representation, warranty, covenant or agreement on which such claim is based ceases to survive as set forth in this Section 7.01.

**Section 7.02 Indemnification by the Members.** Subject to the limitations set forth in this Article VII, the Members, jointly and severally, hereby covenant and agree that the Members shall defend, indemnify and hold harmless Buyer and its Affiliates (including the Company after the Closing), and their respective Members, partners, members, managers, officers, and employees (each a “**Buyer Indemnified Party**”) from and against any and all Losses, arising out of or resulting from:

- (a) the breach of any representation or warranty made by the Selling Parties contained in this Agreement or in any agreement or certificate delivered by the Selling Parties or the Members’ Representative pursuant to this Agreement;
- (b) the breach of any covenant or agreement by the Selling Parties contained in this Agreement or in any agreement or certificate delivered by the Selling Parties or the Members’ Representative pursuant to this Agreement;
- (c) (i) all Taxes (or the non-payment thereof) of the Company with respect to any taxable year or period that ends on or before the Closing Date; (ii) with respect to any taxable year or period beginning before and ending after the Closing Date, all Taxes (or the non-payment thereof) of the Company with respect to the portion of such taxable year or period ending on and including the Closing Date; (iii) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation §1.1502-6 or any analogous or similar state, local, or non-U.S. law or regulation; and (iv) any and all Taxes of any Person (other than the Company) imposed on the Company as a transferee or successor, by contract or pursuant to any law, rule, or regulation, which Taxes relate to an event or transaction occurring before the Closing;
- (d) any claims by or on behalf of any Member or any former equityholder with respect to such Member’s Membership Interests or such former equityholder’s ownership in the Company and such Member’s or former equityholder’s right to receive any portion of the Purchase Price;
- (e) all Indebtedness that remains unpaid as of the Closing (to the extent not paid out of the Cash Payment, pursuant to Section 2.03);
- (f) all Transaction Expenses that remain unpaid as of the Closing (to the extent not paid out of the Cash Payment, pursuant to Section 2.03); and

**Section 7.03 Indemnification by Buyer.** Subject to the limitations set forth in this Article VII, Buyer hereby covenants and agrees that Buyer shall defend, indemnify and hold harmless the Members and their respective Affiliates, members, partners, managers, officers, and employees



(each a “**Member Indemnified Party**”) from and against any and all Losses, arising out of or resulting from:

- (a) the breach of any representation or warranty made by Buyer contained in this Agreement; or
- (b) the breach of any covenant or agreement by Buyer contained in this Agreement.

**Section 7.04** Limitations on Indemnification. The rights of the Buyer Indemnified Parties and Member Indemnified Parties to indemnification under this Article VII are subject to the following limitations:

- (a) With respect to any indemnification claims against the Members for any warranty breaches pursuant to Section 7.02(a), (i) the Members shall not be liable for any Losses in respect of any such breaches unless and until the aggregate amount of such Losses exceeds \$100,000 (the “**Basket**”), and then the Buyer Indemnified Parties shall have a right to be indemnified for the amount of all such Losses, including the Basket amount; and (ii) the Members’ maximum liability for all such breaches shall not exceed \$1,500,000 (the “**Cap**”).
- (b) With respect to any indemnification claims against the Buyer for any warranty breaches pursuant to Section 7.03(a), (i) the Buyer shall not be liable for any Losses in respect of any such breaches unless and until the aggregate amount of such Losses exceeds the Basket, and then the Member Indemnified Parties shall have a right to be indemnified for the amount of all such Losses, including the Basket amount; and (ii) the Buyer’s maximum liability for all such breaches shall not exceed the Cap.
- (c) Any Losses for indemnification hereunder shall be determined without duplication of recovery by reason of the state of facts giving rise to such Losses constituting a breach of more than one representation, warranty, covenant or agreement contained in or made pursuant to this Agreement.
- (d) An Indemnified Party (as defined below) shall not be entitled to indemnification for any punitive damages, except to the extent any such damages are payable to a third party in connection with a Third Party Claim or except in connection with any fraud, intentional misconduct, or gross negligence.
- (e) Each Indemnified Party shall use commercially reasonable efforts to mitigate any Losses for which such Indemnified Party seeks indemnification under this Article VI to the extent required by Applicable Law, it being understood that any reasonable costs and expenses incurred by such Indemnified Party in connection with such mitigation shall constitute Losses that may be recovered hereunder.
- (f) Notwithstanding anything in this Agreement to the contrary and for the avoidance of doubt, the foregoing limitations on indemnification shall not apply with respect to any indemnification claims pursuant to Section 7.02(b)–(f), or with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section 3.01, Section 3.02, Section 3.04, Section 3.14, Section 3.20, Section 3.23, Section 3.27, Section 4.01, and Section 4.05, nor shall such limitations apply to claims arising out of, relating to or



resulting from fraud, intentional misconduct or any willful breach of the provisions of this Agreement.

**Section 7.05 Notice of Loss; Third Party Claims; Direct Claims.** For purposes of this Article VII, the term “**Indemnified Party**” means a Buyer Indemnified Party or a Member Indemnified Party, as the case may be, and the term “**Indemnifying Party**” means the Members pursuant to Section 7.02, or Buyer pursuant to Section 7.03, as the case may be.

- (a) An Indemnified Party shall give the Indemnifying Party written notice of any claim which an Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement stating the amount of the Loss, only to the extent then known by the Indemnified Party, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Article VII except to the extent that the Indemnifying Party is actually and materially prejudiced by such failure and shall not relieve the Indemnifying Party from any other obligation or Loss that it may otherwise have to any Indemnified Party.
- (b) If an Indemnified Party shall receive written notice of any Action, audit or demand (each, a “**Third Party Claim**”) against it or which may give rise to a claim for Loss under this Article VII, within thirty (30) days of the receipt of such notice, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Article VII except to the extent that the Indemnifying Party is actually and materially prejudiced by such failure and shall not relieve the Indemnifying Party from any other obligation or Liability that it may have to any Indemnified Party otherwise than under this Article VII. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party hereunder against any Losses that may result from such Third Party Claim, then the Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if (i) the Indemnifying Party gives notice of its intention to do so to the Indemnified Party within five days of the receipt of such notice from the Indemnified Party, (ii) the Indemnifying Party actively and diligently defends such Third Party Claim, (iii) the Third Party Claim involves only claims for monetary damages and does not seek an injunction or other equitable relief, and (iv) the Third Party Claim does not relate to or otherwise arise in connection with Taxes or any criminal, regulatory or statutory enforcement action; provided, however, that if there exists or is reasonably likely to exist a conflict of interest that would make it inappropriate in the judgment of the Indemnified Party in its sole and absolute discretion for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel in each jurisdiction for which the Indemnified Party determines counsel is required, at the expense of the Indemnifying Party. In the event that the Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the Indemnified Party shall reasonably cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party’s expense, all witnesses, pertinent records, materials and information in the Indemnified Party’s possession or under the Indemnified Party’s control relating thereto as is reasonably required by the Indemnifying Party (provided that no party shall be required to provide

information to the extent it is subject to attorney-client privilege or such information may be reasonably relevant to a direct claim among the parties). Similarly, in the event the Indemnified Party is, directly or indirectly, conducting the defense against any such Third Party Claim, the Indemnifying Party shall reasonably cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party's expense, all such witnesses, records, materials and information in the Indemnifying Party's possession or under the Indemnifying Party's control relating thereto as is reasonably required by the Indemnified Party (provided that no party shall be required to provide information to the extent it is subject to attorney-client privilege or may be reasonably relevant to a direct claim among the parties). No such Third Party Claim may be settled by the Indemnifying Party without the prior written consent of the Indemnified Party which shall not be unreasonably withheld, conditioned or delayed.

- (c) Any claim by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party from any of its obligations under this Article VII except to the extent that the Indemnifying Party is actually and materially prejudiced by such failure and shall not relieve the Indemnifying Party from any other obligation or Liability that it may otherwise have to any Indemnified Party under this Article VII. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail based on the facts then known, and shall indicate the estimated amount, if reasonably practicable based on the facts then known, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. During such 30-day period, the Indemnifying Party and Indemnified Party shall use good faith efforts to resolve the disputed matters. If the dispute is not resolved within such 30-day period, either party may seek resolution of the dispute in a court having jurisdiction over the parties and the matter. If the Indemnifying Party does not so respond within such 30-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement; provided, that, in no event shall any Indemnified Party be required to wait for such 30-day period prior to pursuing any remedies available to such Indemnified Party pursuant to this Agreement.

**Section 7.06 Effect of Investigation.** The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its representatives) or by reason of the fact that the Indemnified Party or any of its representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in Section 5.01 or Section 5.02, as the case may be.

**Section 7.07 No Circular Recovery.** Notwithstanding anything to the contrary in this Agreement, each Member hereby agrees that he, she or it will not make any claim for indemnification against Buyer, any Buyer Indemnified Party or the Company by reason of the fact that such Member was a controlling person, manager, officer, employee or representative of the Company with respect to any claim brought by a Buyer Indemnified Party against any Member

relating to this Agreement or any of the transactions contemplated hereby or that is based on any facts or circumstances that form the basis for an Indemnity Claim by a Buyer Indemnified Party hereunder.

**Section 7.08 Exclusive Remedies.** Except for claims based on fraud, intentional misconduct or any willful breach of the provisions of this Agreement, the indemnification rights provided in this Article VII shall be the sole and exclusive remedy available to the parties hereto for any and all Losses related to a breach of any of the terms, conditions, covenants, agreements, representations or warranties contained in this Agreement, or any right, claim or action arising from the transactions contemplated hereby; provided, however, that the provisions of this Section 7.0 shall not preclude any party from bringing an action for specific performance, injunction or any other equitable remedy to the extent that such action or remedy is permitted by this Agreement.

**Section 7.09 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

## ARTICLE VIII. MISCELLANEOUS

### **Section 8.01 Members' Representative.**

- (a) Each Member hereby irrevocably appoints Andrew Hunt as the Members' Representative and attorney-in-fact to act on behalf of the Members with respect to this Agreement and to take any and all actions and make any decisions required or permitted to be taken by any Member individually or by the Members' Representative pursuant to this Agreement, including the exercise of the power to give and receive notices and communications in connection with this Agreement and the transactions contemplated hereby, to take all actions on behalf of the Members pursuant to this Agreement, and to take all actions necessary or appropriate in the judgment of the Members' Representative for the accomplishment of the foregoing. More specifically, the Members' Representative shall have the authority to make all decisions and determinations and to take all actions (including agreeing to any amendments to this Agreement or any Ancillary Agreement to which it is a party or to the termination hereof or thereof) required or permitted hereunder on behalf of each such Member, and any such action, decision or determination so made or taken shall be deemed the action, decision or determination of each such Member, and any notice, communication, document, certificate or information required (other than any notice required by Law or under the Company's Organizational Documents) to be given to any Member hereunder or pursuant to any Ancillary Agreement shall be deemed so given if given to the Members' Representative. Without limiting the generality of the foregoing, the Members' Representative shall be authorized, in connection with the Closing, to execute all certificates, documents and agreements on behalf of and in the name of the Members necessary to effectuate the Closing and related transactions. The Members' Representative shall be authorized to take all actions on behalf of the Members in connection with any claims made under Article VII of this Agreement, to defend or settle such claims, and to make payments in respect of such claims on behalf of the Members.
- (b) The appointment of the Members' Representative shall be deemed coupled with an interest and shall be irrevocable, and Buyer and any other Person may conclusively and absolutely rely, without inquiry, upon any actions of the Members' Representative as the acts of the

Members in all matters referred to in this Agreement. Each of the Members hereby ratify and confirm all that the Members' Representative shall do or cause to be done by virtue of the appointment of the Members' Representative as the Members' Representative of such Member. The Members' Representative shall act for the Members on all of the matters set forth in this Agreement in the manner the Members' Representative believes to be in the best interest of the Members, but the Members' Representative shall not be responsible to any such Member for any loss or damage any such Member may suffer by reason of the performance by the Members' Representative of their duties under this Agreement, other than loss or damage arising from willful misconduct in the performance of such duties. In no event shall the Members' Representative be liable to the Members hereunder or in connection herewith for any indirect, punitive, exemplary, special, incidental or consequential damages. The Members' Representative shall be fully protected against the Members in relying upon any written notice, demand, certificate or document that they in good faith believe to be genuine, including facsimiles or copies thereof.

- (c) No Member shall have the right to object to, dissent from, protest or otherwise contest any such decision or action of the Members' Representative. The provisions of this Section 8.01, including the power of attorney granted by this Section 8.01, are independent and severable, are irrevocable and coupled with an interest and shall not be terminated by any act of any one Member, or by operation of Law, whether by death or other event.
- (d) The Members' Representative may resign at any time, and may be removed for any reason or no reason by the vote of the holders of a majority of the Membership Interests immediately prior to Closing; provided, however, in no event shall the Members' Representative resign or be removed without the Members having first appointed a new Members' Representative who shall assume such duties immediately upon the resignation or removal of the Members' Representative. In the event of the death, incapacity, resignation or removal of the Members' Representative, a new Members' Representative shall be appointed by the vote of the holders of a majority of the Membership Interests immediately prior to Closing. Notice of such vote or a copy of the written consent appointing such new Members' Representative shall be sent to Buyer promptly following such vote or consent, such appointment to be effective upon the date indicated in such consent; provided, that until such notice is received, Buyer shall be entitled to rely on the decisions and actions of the prior Members' Representative as described in this Section 8.01.
- (e) The Members' Representative shall not be liable to the Members for actions taken pursuant to this Agreement, except to the extent such actions shall have been determined by a court of competent jurisdiction to have constituted fraud, intentional misconduct or any willful breach of the provisions of this Agreement (it being understood that any act done or omitted pursuant to the advice of counsel, accountants and other professionals and experts retained by the Members' Representative shall be conclusive evidence of good faith). The Members shall indemnify and hold harmless the Members' Representative from and against, compensate him, her or it for, and reimburse him, her or it for and pay any and all Losses, arising out of and in connection with, his, her or its activities as the Members' Representative under this Agreement, including without limitation any travel expenses such as transportation, lodging and meals, and attorney fees incurred in connection with his, her, or its actions as the Members' Representative, in each case as such Loss is suffered or incurred; provided, that in the event it is finally adjudicated that a Loss or any portion

thereof was primarily caused by the fraud, intentional misconduct or any willful breach of the provisions of this Agreement by the Members' Representative, the Members' Representative shall reimburse the Members the amount of such indemnified Loss attributable to such fraud, intentional misconduct or willful misconduct.

**Section 8.02 Governing Law.** This Agreement shall be governed by, enforced, and construed under and in accordance with the Laws of the State of Arizona, without giving effect to the principles of conflicts of law thereunder. Each of the parties (a) irrevocably consents and agrees that any legal or equitable action or proceedings arising under or in connection with this Agreement may be brought in the state or federal courts of the United States with jurisdiction in either Maricopa County, Arizona or Cook County, Illinois. By execution and delivery of this Agreement, each party hereto irrevocably submits to and accepts, with respect to any such action or proceeding, generally and unconditionally, the jurisdiction of the aforesaid courts, and irrevocably waives any and all rights such party may now or hereafter have to object to such jurisdiction.

**Section 8.03 Notices.**

- (a) Any notice or other communications required or permitted hereunder shall be in writing and shall be sufficiently given if personally delivered to it or sent by email, overnight courier or registered mail or certified mail, postage prepaid, addressed as follows:

(i) If to Buyer, to:

Harvest Enterprises, Inc.  
1155 W. Rio Salado Parkway, Suite 201  
Tempe, Arizona 85281  
Attn: Brian Manning and Laz Rothstein  
Email: bmanning@harvestinc.com and  
lrothstein@harvestinc.com

with a copy to (which shall not constitute notice):

Quarles & Brady LLP  
Renaissance One, Two North Central  
Avenue  
Phoenix, Arizona 85004  
Attention: Jon Howard  
Email: Jon.Howard@quarles.com

(ii) If to the Company, to:

1188 Estate Lane  
Lake Forest, Illinois 60045  
Attention: Andy Hunt  
Email: andy@elevele.net

with a copy to (which shall not constitute notice):

Ginsberg Jacobs LLC  
300 South Wacker Drive,  
Suite 2750  
Chicago, Illinois 60606  
Attention: Edward Quinlisk  
Email: equinlisk@ginsbergjacobs.com



(ii) If to the Members' Representative, to: with a copy to (which shall not constitute notice):

1188 Estate Lane  
Lake Forest, Illinois 60045  
Attention: Andy Hunt  
Email: andy@elevele.net

Ginsberg Jacobs LLC  
300 South Wacker Drive,  
Suite 2750  
Chicago, Illinois 60606  
Attention: Edward Quinlisk  
Email: equinlisk@ginsbergjacobs.com

- (b) Any party may change its address for notices hereunder upon notice to each other party in the manner for giving notices hereunder.
- (c) Any notice hereunder shall be deemed to have been given (i) upon receipt, if personally delivered, (ii) on the day after dispatch, if sent by overnight courier, (iii) upon dispatch, if transmitted by email with return receipt requested and received, and (iv) three (3) days after mailing, if sent by registered or certified mail.

**Section 8.04 Attorneys' Fees.** In the event that any party institutes any action or suit to enforce this Agreement or to secure relief from any default hereunder or breach hereof, the substantially prevailing party shall be reimbursed by the losing party for all costs, including reasonable attorneys' fees, incurred in connection therewith and in enforcing or collecting any judgment rendered therein.

**Section 8.05 Confidentiality.** Each party agrees that, unless and until the transactions contemplated by this Agreement have been consummated, it and its representatives will hold in strict confidence all data and information obtained with respect to another party or any subsidiary thereof from any representative, officer, director or employee, or from any books or records or from personal inspection, of such other party, and shall not use such data or information or disclose the same to others, except (i) to the extent such data or information is published, is a matter of public knowledge, or is required by Law to be published; or (ii) to the extent that such data or information must be used or disclosed in order to consummate the transactions contemplated by this Agreement. In the event of the termination of this Agreement, each party shall return to the applicable other party all documents and other materials obtained by it or on its behalf and shall destroy all copies, digests, work papers, abstracts or other materials relating thereto, and each party will continue to comply with the confidentiality provisions set forth herein.

**Section 8.06 Disclosure Schedules.** Nothing in the Disclosure Schedule is intended to broaden the scope of any representation or warranty contained in this Agreement or to create any covenant unless clearly specified to the contrary herein or therein. Inclusion of any item on any Disclosure Schedule (a) does not represent a determination that such item is material nor shall it be deemed to establish a standard of materiality, (b) does not represent a determination that such item did not arise in the ordinary course of business, and (c) shall not constitute, or be deemed to be, an admission to any third party concerning such item. Inclusion of any item under any Section of the Disclosure Schedule will also be deemed a disclosure as to each other applicable Section of the Disclosure Schedule, if any, to the extent such disclosure is reasonably apparent on its face. The Disclosure Schedule includes descriptions of instruments or brief summaries of certain aspects of the Company



and its Business and operations. The descriptions and brief summaries are not necessarily complete and are provided in the Disclosure Schedule to identify documents or other materials previously delivered or made available.

**Section 8.07 Third Party Beneficiaries.** Except for the provisions of Article VII relating to indemnified parties, this Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any other Person, including any employee or former employee of the Company, any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

**Section 8.08 Expenses.** Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; provided, that the parties hereto agree that upon consummation of the transactions contemplated by this Agreement, the Company shall pay all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred by Buyer in connection with this Agreement and the transactions contemplated by this Agreement.

**Section 8.09 Entire Agreement.** This Agreement represents the entire agreement between the Parties relating to the subject matter thereof and supersedes all prior agreements, understandings and negotiations, written or oral, with respect to such subject matter.

**Section 8.10 Amendment; Waiver.** At any time prior to the Closing, this Agreement may be amended, modified, superseded, terminated or cancelled, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by Buyer and the Members' Representative. Every right and remedy provided herein shall be cumulative with every other right and remedy, whether conferred herein, at law, or in equity, and may be enforced concurrently herewith, and no waiver by any party of the performance of any obligation by the other shall be construed as a waiver of the same or any other default then, theretofore, or thereafter occurring or existing. Neither any failure or delay in exercising any right or remedy hereunder or in requiring satisfaction of any condition herein nor any course of dealing shall constitute a waiver of or prevent any party from enforcing any right or remedy or from requiring satisfaction of any condition. No notice to or demand on a party waives or otherwise affects any obligation of that party or impairs any right of the party giving such notice or making such demand, including any right to take any action without notice or demand not otherwise required by this Agreement. No exercise of any right or remedy with respect to a breach of this Agreement shall preclude exercise of any other right or remedy, as appropriate to make the aggrieved party whole with respect to such breach, or subsequent exercise of any right or remedy with respect to any other breach.

**Section 8.11 Arm's Length Bargaining; No Presumption Against Drafter.** This Agreement has been negotiated at arm's-length by parties of equal bargaining strength, each represented by counsel or having had but declined the opportunity to be represented by counsel and having participated in the drafting of this Agreement. This Agreement creates no fiduciary or other special relationship between the parties hereto, and no such relationship otherwise exists. No presumption in favor of or against any party in the construction or interpretation of this Agreement or any

provision hereof shall be made based upon which Person might have drafted this Agreement or such provision.

**Section 8.12 Headings.** The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties hereto.

**Section 8.13 Assignment.** Neither the Company nor the Members may assign any of their rights or obligations set forth under this Agreement, by operation of Law or otherwise, without the express written consent of the Buyer (which consent may be granted or withheld in its sole discretion). At any time prior to Closing, Buyer may assign any and all of its rights and obligations set forth under this Agreement to (i) any of its Affiliates, subsidiaries or ToroVerde Inc., an Ontario corporation (“**ToroVerde**”), or (ii) any purchaser of all or substantially all of Buyer’s assets or equity. Additionally, Buyer may assign any and all of its rights and obligations set forth under this Agreement to any third party of its choosing, subject to obtaining the Members’ Representative’s written consent thereto, which consent will not be unreasonably conditioned, delayed or withheld. Buyer Indemnified Parties shall be permitted to collaterally assign any or all of their rights and obligations hereunder to any provider of debt financing to it or any of its Affiliates. In the event the Buyer assigns its rights and obligations set forth in this Agreement a third party (i.e., not an Affiliate or subsidiary of the Buyer), then the Purchase Price set forth herein shall be paid by the assignee in cash on the Closing Date. In the event of an assignment by Buyer to an Affiliate, subsidiary or, subject to the following sentence, ToroVerde, all the remaining terms and conditions of this Agreement will remain as presently set forth herein. In the event of an assignment by Buyer to ToroVerde, the extension of the terms and conditions of this Agreement as presently set forth herein will be subject to the Members’ Representative’s written consent, which consent will not be unreasonably conditioned, delayed or withheld.

**Section 8.14 Waiver of Jury Trial.** Each of the parties hereto hereby waives to the fullest extent permitted by applicable Law any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of or relating to this Agreement or the transactions contemplated by this Agreement. Each of the parties hereto hereby (a) certify that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledge that they has been induced to enter into this Agreement and the transactions contemplated by this Agreement, as applicable, by, among other things, the mutual waivers and certifications in this Section 8.14.

**Section 8.15 Further Assurances.** Each party shall execute and deliver such documents and take such action, as may reasonably be considered within the scope of such party’s obligations hereunder, necessary to effectuate the transactions contemplated by this Agreement.

**Section 8.16 Specific Performance.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof or were otherwise breached and that each party hereto shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent breaches of the provisions hereof and to enforce specifically the terms and provisions hereof, without the proof of actual damages, in addition to any other remedy to which they are entitled at law or in equity. Each party agrees to waive any requirement for the security or posting of any bond in connection with any such equitable remedy, and agrees that it will not oppose the granting of an injunction, specific performance or other equitable relief on the basis that (a) the other party has an adequate remedy at

law, or (b) an award of specific performance is not an appropriate remedy for any reason at law or equity.

**Section 8.17 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall be but a single instrument. The execution and delivery of a facsimile or other electronic transmission of a signature to this Agreement shall constitute delivery of an executed original and shall be binding upon the person whose signature appears on the transmitted copy.

**Section 8.18 Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

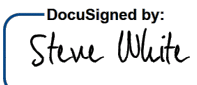
**Section 8.19 Non-Compete.** From and after the Closing and conditioned upon the occurrence of the Closing, each Member agrees not to engage in, have an ownership interest in, or participate in any active cannabis dispensary business (a “**Restricted Business**”) (a) in the State of Illinois during the eighteen (18) month period following Closing, and (b) in Lake County, Illinois during the thirty-six (36) month period following Closing, except that no Member shall be prohibited from (a) owning securities of the Buyer, (b) owning up to 5% of a Restricted Business so long as such ownership is solely for investment purposes and such Member does not actively participate in or render services to such Restricted Business, (c) owning investments owned by a Member prior to the Effective Date, and (d) pursuing licenses for a Restricted Business.

*[Signatures Appear on Following Page]*

IN WITNESS WHEREOF, the parties have executed this Membership Interest Purchase Agreement as of the Effective Date.

BUYER:

**HARVEST ENTERPRISES, INC.**

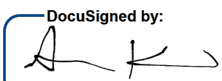
By:  DocuSigned by:  
Name: Steve White  
Title: CEO

COMPANY:

**ELEVELE LLC**

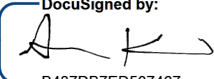
By:  DocuSigned by:  
Name: Andrew Hunt  
Title: Co-Owner

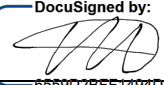
MEMBERS' REPRESENTATIVE:

 DocuSigned by:  
Andrew Hunt

IN WITNESS WHEREOF, the parties have executed this Membership Interest Purchase Agreement as of the Effective Date.

**MEMBERS:**

DocuSigned by:  
  
B437DB7E9567467...  
Andrew Hunt

DocuSigned by:  
  
6559D2BFF1494DD...  
Veronica Hunt

DocuSigned by:  
  
038009BD8320429...  
William Riley

**EXHIBIT A**

Form of Promissory Note

(see attached)



**EXHIBIT B**Capitalization Schedule

<b><u>No.</u></b>	<b><u>Name and Address</u></b>	<b><u>Percentage Ownership of the Company</u></b>
1.	<b>Veronica Hunt</b> 1188 Estate Lane Lake Forest, Illinois 60045  veronica@elevele.net	49%
2.	<b>Andrew Hunt</b> 1188 Estate Lane Lake Forest, Illinois 60045  andy@elevele.net	48%
3.	<b>William Riley</b> 205 Washington Circle Lake Forest, Illinois 60045	3%
	<b>Total</b>	100%

**AMENDMENT  
TO  
MEMBERSHIP INTEREST PURCHASE AGREEMENT**

Dated: March 29, 2019 (the “**Effective Date**”)

Reference is hereby made to that certain Membership Interest Purchase Agreement (the “**Agreement**”) entered into by and among Harvest Enterprises, Inc., a Delaware corporation (“**Harvest**”), Elevele, LLC, an Illinois limited liability company (the “**Company**”), all of the Members of the Company (the “**Members**”), and Andrew Hunt, as the Members’ Representative (the “**Members’ Representative**”), which was dated effective March 25, 2019. Each of Harvest and the Members’ Representative is a “**Party**,” and together are, the “**Parties**”). Any capitalized term used but not defined herein shall have the meaning ascribed to it in the Agreement.

WHEREAS, the Parties desire to amend the Agreement to provide terms regarding transitional services to be afforded by the Members to Harvest after the Closing.

WHEREAS, pursuant to Section 8.10 of the Agreement, the Agreement may be amended prior to the Closing by a written instrument executed by Harvest and the Members’ Representative.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the following:

1. The following Section 2.11 will be added to the Agreement, and will appear in the Agreement as follows:

**Section 2.11 Transitional Services.** Upon the Closing and for a period of three (3) months thereafter, unless such time is lengthened by the Parties upon mutual written consent, the Members will make themselves reasonably available to the Buyer, its employees, and agents, both virtually and at the premises, in order to help facilitate a seamless and effective transition of ownership and operations from the Members and their employees and agents, to the Buyer and its employees and agents.

2. The remaining provisions of the Agreement shall remain in full force and effect.
3. This Amendment may be executed in counterparts, each of which constitutes an original, and when taken together, constitute one and the same agreement.

*[signature page follows]*

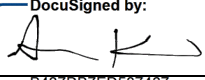
IN WITNESS WHEREOF, Harvest and the Members' Representative have executed this Amendment to the Agreement as of the Effective Date.

BUYER:

**HARVEST ENTERPRISES, INC.**

By:   
Name: Steve White  
Title: CEO

MEMBERS' REPRESENTATIVE:

  
Andrew Hunt

**AMENDMENT NO. 2  
TO  
MEMBERSHIP INTEREST PURCHASE AGREEMENT**

Dated: April 30, 2019 (the “**Effective Date**”)

Reference is hereby made to that certain Membership Interest Purchase Agreement (the “**Agreement**”) entered into by and among Harvest Enterprises, Inc., a Delaware corporation (“**Harvest**”), Elevele, LLC, an Illinois limited liability company (the “**Company**”), all of the Members of the Company, and Andrew Hunt, as the Members’ Representative (the “**Members’ Representative**”), which was dated effective March 25, 2019, as amended. Each of Harvest and the Members’ Representative is a “**Party**,” and together are, the “**Parties**”). Any capitalized term used but not defined herein shall have the meaning ascribed to it in the Agreement.

WHEREAS, the Parties desire to amend the Agreement to provide terms regarding the Company entering into a transaction to purchase the real property situated at 260 Skokie Valley Road, Highland Park, IL 60035.

WHEREAS, pursuant to Section 8.10 of the Agreement, the Agreement may be amended prior to the Closing by a written instrument executed by Harvest and the Members’ Representative.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the following:

1. Section 2.01(b). Section 2.01(b) of the Agreement is hereby amended and restated in its entirety and shall appear as follows:

“(b) The aggregate purchase price for the Acquired Interests (the “**Purchase Price**”) shall be an amount equal to Fourteen Million Dollars (USD \$14,000,000), plus the Skokie Expenditures (as hereinafter defined) (collectively, the “**Base Purchase Price**”), minus (i) the amount of Closing Date Indebtedness, minus (ii) the amount of Closing Date Transaction Expenses, and subject to the remaining adjustments set forth in Section 2.02.”

2. Section 2.01(c)(i). Section 2.01(c)(i) of the Agreement is hereby amended and restated in its entirety and shall appear as follows:

“(i) Three Million Five Hundred Thousand Dollars (USD \$3,500,000) in cash, plus the Skokie Expenditures in cash (collectively, the “**Cash Payment**”).”

3. Section 6.04(q). Section 6.04(q) shall be added to the Agreement and shall appear as follows:

“(q) Notwithstanding any other provision set forth above or elsewhere in this Agreement, the Company shall be permitted to enter into an assignment and assumption agreement, or other similar agreement, regarding that certain Purchase and Sale Agreement, dated August 22, 2018 (the “**Skokie PSA**”), between The Rudman Family Limited Partnership and Endurance Retail Partners, LLC (“**Endurance**”), as amended (attached hereto as Exhibit A), for the purchase and

sale of the property located at 260 Skokie Valley Road, Highland Park, Illinois 60035 (the “**Skokie Property**”), whereby the Company may assume Endurance’s rights and responsibilities pursuant to and under the Skokie PSA as “Purchaser.” In connection with the Company’s acquisition of Endurance’s rights and responsibilities pursuant to the Skokie PSA, the Company is hereby authorized to spend no more than One Hundred Thousand Dollars (USD \$100,000) in fees and earnest money deposits, and other similar expenditures (the “**Skokie Expenditures**”), and may not enter into any financing arrangement for the purchase of the Skokie Property without the express written consent of Buyer. The Skokie Expenditures will be included in the amounts of the Base Purchase Price and Cash Payment whether or not the Company ultimately closes on the purchase of the Skokie Property.”

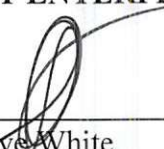
4. The remaining provisions of the Agreement shall remain in full force and effect.
5. This Amendment may be executed in counterparts, each of which constitutes an original, and when taken together, constitute one and the same agreement.

*[signature page follows]*


IN WITNESS WHEREOF, Harvest and the Members' Representative have executed this Amendment No. 2 to the Agreement as of the Effective Date.

BUYER:

**HARVEST ENTERPRISES, INC.**

By:   
Name: Steve White  
Title: CEO

MEMBERS' REPRESENTATIVE:

  
\_\_\_\_\_  
Andrew Hunt



**EXHIBIT A**

**Purchase and Sale Agreement, as Amended**

(see attached)

# **Exhibit B**



**Illinois Department of Financial and Professional Regulation**  
**Division of Professional Regulation**

**JB PRITZKER**  
Governor

**DEBORAH HAGAN**  
Secretary

**CECILIA ABUNDIS**  
Acting Director  
Division of Professional Regulation

Friday, July 19, 2019

Elevele  
1460A Old Skokie Rd  
Highland Park, IL 60035-3032  
[andy@elevele.net](mailto:andy@elevele.net)

Dear Elevele,

This letter is to confirm the Illinois Department of Financial and Professional Regulation has not approved the Elevele and Harvest transaction at this time. The Department is still reviewing the submitted materials. The Department will not approve a transaction that gives a principal officer of a dispensary ownership, control or financial interest in more than 5 (five) dispensaries. Due to the implementation of the Cannabis Regulation and Tax Act and the numerous change of ownership requests sitting before the Department, review of pending requests is taking considerably more time than usual.

Sincerely,

A handwritten signature in black ink that reads "Luci Pardy". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Luci Pardy (Doler)**  
*Assistant General Counsel*  
Illinois Department of Financial and Professional Regulation  
Division of Professional Regulation  
100 W. Randolph Street, 9<sup>th</sup> Floor  
Chicago, IL 60601  
Phone: (312) 793-0484